RNI No. MAHBIL /2009/31744
Reg. No. MH/MR/South-318/2013-15

महाराष्ट्र शासन राजपत्र

भाग एक–ल

वर्ष ६, अंक ७] गुरुवार ते बुधवार, एप्रिल २४-३०, २०१४/वैशाख ४-१०, शके १९३६ [पृष्ठे ४०, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील (भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त) अधिसूचना, आदेश व निवाडे.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 259 OF 1996.—Mahanagarpalika Karmachari Sangh, Through its General Secretary, Kolhapur.—*Complainant—Versus*––(1) Kolhapur Municipal Corporation, Kolhapur, through its Commissioner.—*Respondent No. 1.* (2) The Health Officer, Kolhapur Municipal Corporation, Kolhapur.—*Respondent No. 2.*

In the matter of Complaint u/s. 28(1) read with Item Nos. 5, 9 and 10 of Schedule-IV of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri U. B. Jadhav, Advocate for the Complainant.

Shri Y. G. Salokhe, Advocate for the Respondents.

Judgment

This is a Complaint Under Section 28(*1*) read with Items 5, 9 and 10 of Schedule-IV of the M. R. T. U. and P. U. L. P. Act.

2. Admittedly, the Complainant-Union is recognised under the M.R.T.U. and P.U.L.P. Act, 1971 for Respondent No. 1-Kolhapur Municipal Corporation. Smt. R. S. Patil is member of the Union and is working as a Clerk from the year 1978 with Corporations' Health Department.

3. Respondent No. 2 (hereinafter referred to Health Officer) served chargesheet dated 5th January 1993 upon Smt. Patil, alleging various misconducts. She then gave explanation dated 16th January 1993 and prayed for an opportunity to put her case through the Union Representative. Health Officer then directed her to attend his office on 5th February 1993 with Union Representative. Union's Secretary Shri Savant then made an application on 5th February 1993 to the Health Officer to deliver all documents to him. The Health Officer replied that date and time of the enquiry will be communicated later on.

4. Health Officer then directly issued an order dated 21st September 1993 to Smt. Patil that her one increment is permanently withheld as per show cause notice dated 5th January 1993. Smt. Patil then made representations dated 22nd October 1993 and 25th November 1993 that she is punished without extending an opportunity of being heard. But the Health Officer gave reply dated 26th November 1993 that decision dated 21st September 1992 is not changed.

5. Smt. Patil then filed Complaint (ULP) No. 64/93 before this Court alleging unfair labour practice. But the same was disposed off on account of its non-maintainability.

6. The Complainant Union filed this complaint on 19th July 1996 alleging that no enquiry took place as per the chargesheet although the Health Officer replied on 5th February 1993 that date and time of the enquiry will be communicated later on. Copies of documents relied by the Health Officer were not supplied to Smt. Patil. As such, punishment imposed is contrary to principles of natural justice as well as service rules. It is nowhere explained in the punishment order as to now she is found guilty of the misconducts and as to how her preliminary explanation is unsatisfactory. As such, order imposing penalty is arbitrary and vindictive. According to the Complainant the acts of the Respondent is an unfair labour practice under Item Nos. 5, 9 and 10 of Schedule-IV of the M. R. T. U. and P. U.L.P. Act. Consequently, it has prayed for requisite declaration of unfair labour practice then to set aside the punishment order, direction to pay due wages without withholding one increment and other consequential reliefs.

7. The Respondents filed say cum written statement at Exh. C-4 and traversed some of the material allegations made by the Complainant. They contended at the outset that the complaint is barred by limitation. According to them punishment of withholding one annual increment of Smt. Patil is permitted under the Bombay Provincial Municipal Corporation Act and relevant service rules. Thus, they justified their action and prayed for dismissal of the complaint.

8. Considering rival pleadings, following points arise for my determination :—

(*i*) Does the Complainant Union prove that punishment imposed upon Smt. Patil is contrary to service rules and is an unfair labour practice under Item 9 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act ?

(*ii*) What order ?

9. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) The Complaint is allowed.

Reasons

10. Although it is alleged by the Complainant Union that Respondents have engaged in unfair labour practices under Items 5 and 10, there is no pleadings and evidence on record regarding favoritisms or partiality to one set of workers regardless of merits and indulgence in an act of force or violence. Consequently, no issues are framed regarding those unfair labour practices.

11. The Complainant Union has produced a chargesheet and show cause notice dated 5th January 1993, explanation dated 16th January 1993, Health Officer's notice to attend his office dated 5th February 1993, copy of application dated 5th February 1993 made by its Secretary to deliver all copies to him, punishment order. Two representations of Smt. Patil and Health Officer's final letter dated 26th November 1993 with list Exh. C-4. The Union then filed on affidavit Exh. U-9 of its Secretary Shri Savant. He was cross-examined by Advocate of the Respondents. No documentary or oral evidence was adduced by the Respondents.

12. Shri Savant has affirmed that Health Officer endorsed on his application dated 5th February, 1993 for delivery of documents that date and time of the enquiry will be communicated later on. But no such date was communicated. No enquiry took place and decision to impose punishment is unilateral and illegal. He has further affirmed that individual complaint of Smt. Patil bearing complaint (ULP) No. 464 of 1993 was disposed off being not maintainable. Then this complaint is filed and, therefore, delay if any may be condoned. He denied that no enquiry is necessary for imposing minor punishment but admitted that the cause of action arose in the year 1993.

13. It is held in *Maharashtra State Co-operative-Cotton Growers Marketing Federation Ltd.* V/s. *Maharashtra State Co-operative Cotton Growers Marketing Federation Employees Union reported in 1992 I CLR at page 350 (Bom. H. C.)* That unfair labour practices covered by items 6 and 9 are continuing and recurring unfair labour practices. The Union has mainly alleged unfair labour practice under item 9 of Sch. IV of the M. R. T. U. and P. U. L. P. Act. Consequently, it cannot be accepted that the complaint is barred by limitation. On the contrary, the cause of action is continuing or recurring one and the complaint is within limitation. With such initial finding, I proceed further.

14. Shri Jadhav, learned Advocate representing the Complainant submitted that the Health Officer imposed penalty without enquiry. As such, it is an unfair labour practice under Item 9 of Schedule-IV of the Act on its face itself. He further added that Health Officer served a chargesheet was bound to hold an enquiry and cannot revert from such track and impose unilateral penalty. As such, the punishment is contrary to the Maharashtra Civil Services (Discipline and Appeal) Rules.

15. Section 465(*1*)(*i*) of the Bombay Provincial Municipal Act provides that the Standing Committee shall frame regulations prescribing the procedure to be followed in removing from service or dismissing or otherwise punishing any Municipal Council Officer or servant. The Corporation has accordingly adopted the procedure prescribed under the Maharashtra Civil Services (Discipline and Appeal) Rules. Rule 10(*2*) thereof says that if an a case, it is proposed to withhold increment with cumulative effect for any period, an enquiry shall be held in a manner laid down in Sub-Rule (*3*) to (*27*) of Rule 8. The Health Officer has nowhere delivered record regarding alleged misconducts to Smt. Patil. As such, punishment imposed is contrary to Service Rules.

16. Shri Salokhe learned Advocate representing the Corporation replied that minor penalties can be imposed without enquiry. Assuming but not admitting his such proposition, the same cannot be applied here. The Health Officer issued a chargesheet and proposed to hold an enquiry. Therefore, now he cannot abandon the enquiry and resort to a short cut. He ought to have proceeded further as per the Maharashtra Civil Services (Discipline and Appeal) Rules. Besides, punishment order is not speaking one. It is nowhere whispered as to how Smt. Patil is found to be guilty of misconducts. It is surprising to note that a show cause notice as to why one increment should not be permanently withheld was issued on 5th January 1993 itself *i. e.* on the date on which the chargsheet was served. All such aspects established that punishment imposed is contrary to Service Rules and is an unfair labour practice under Item 9 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act. Accordingly I answer Point No. 1 in the affirmative.

17. Before parting with this judgment, I must make is clear that affirmative finding of unfair labour practice is recorded mainly for violation of principles of natural justice. The Corporation is at liberty to take appropriate action against Smt. Patil strictly according to provisions of law.

18. In the result, I pass following order :—

Order

(*i*) The Complaint is partly allowed.

(*ii*) It is declared that Respondents have indulged in an unfair labour practice under Item 9 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act.

(*iii*) The Respondent are directed to cease and desist from engaging in such unfair labour practice forthwith.

(*iv*) Respondent No. 2's order dated 21st September 1993 withholding one increment permanently Smt. Patil is set aside.

(*v*) The Respondents are directed to pay difference of wages to Smt. Patil within one month from do-day.

(*iv*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 1st July 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 927 OF 2001.—Shri Satish Ramchandra Nalawade, 146, A-Sandhyamath Galli, Shivaji Peth, Kolhapur.—*Complainant—Versus*––(1) Chief Executive Officer, Shri Balbhim Co-operative Bank Ltd., 2402/2, A-Shivaji Peth, Kolhapur.—*Respondent No. 1.* (2) Shri Balbhim Co-operative Bank Ltd., 2402/2, A-Shivaji Peth, Kolhapur, through its Officer.—*Respondent No. 2.* (3) Shri Balbhim Co-operative Bank Ltd., Kolhapur, through its Chairman.—*Respondent No. 3.*

COMPLAINT (ULP) No. 928 OF 2001.—Shri Rajendra Doulatrao Patil, 1488, B-Ward, Gulab Galli, Mangalwar Peth, Kolhapur.—*Complainant—Versus*––(1) Chief Executive Officer, Shri Balbhim Co-operative Bank Ltd., Kolhapur.—*Respondent No. 1.* (2) Shri Balbhim Co-operative Bank Ltd., Kolhapur, through its Officer.—*Respondent No. 2.* (3) Shri Balbhim Co-operative Bank Ltd., Kolhapur, through its Chairman.—*Respondent No. 3.*

COMPLAINT (ULP) No. 929 OF 2001.—Shri Nilesh Chandrakant Balate, 580, B-Ward, Near M.L.G. High School, Mangalwar Peth, Kolhapur.—*Complainant—Versus*–(1) Chief Executive Officer, Shri Balbhim Co-operative Bank Ltd., Kolhapur.—*Respondent No. 1.* (2) Shri Balbhim Co-operative Bank Ltd., Kolhapur, through its Officer.—*Respondent No. 2.* (3) Shri Balbhim Co-operative Bank Ltd., Kolhapur, through its Chairman.—*Respondent No. 3.*

COMPLAINT (ULP) No. 930 OF 2001.—Shri Anil Narayan Kadam, 1746, E Ward, Rajarampuri, 5th Lane, Kolhapur.—*Complainant—Versus*–(1) Chief Executive Officer, Shri Balbhim Co-operative Bank Ltd., Kolhapur.—*Respondent No. 1.* (2) Shri Balbhim Co-operative Bank Ltd., Kolhapur, through its Officer.—*Respondent No. 2.* (3) Shri Balbhim Co-operative Bank Ltd., Kolhapur, through its Chairman.—*Respondent No. 3.*

In the matter of Complaints under Section 28(*1*) read with Item Nos. 3, 5 and 10 of Schedule-IV of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Appearances.— Shri A. T. Upadhye, Advocate for Complainants.

Shri U. B. Jadhav, Advocate for the Respondents.

Common Judgement

All the complaints are filed alleging unfair labour practices under section 28(*1*) read with Items 3, 5 and 10 of Schedule-IV of the M. R. T. U. and P. U. L. P. Act, 1971. Common question of law and facts are arising out of these complaints and evidence therein is identical, as such all the complaints are disposed off by a common judgment for the sake of convenience.

2. Admittedly, Respondent No. 2-Shri Balbhim Co-operative Bank Ltd, Kolhapur (hereinafter referred to as the Bank) is a Co-operative Bank duly registered under the Maharashtra Co-operative Societies Act and does banking business within the territorial limits of Kolhapur District. Respondent No. 1 is its Chief Executive Officer. The Bank is covered by provisions of Bombay Industrial Relations Act. Eventually it is amenable to provisions of the M.R.T.U. and P.U.L.P. Act. It is also not in dispute that all the Complainants are working with the Bank at respective branches.

3. The Complainant of Complaint (ULP) No. 927 of 2001 (Shri Nalawade and Complainant of Complaint (ULP) No. 928 of 2001 (Shri Patil) were working as Clerks with Bank's Shivaji Peth Branch. The Complainant of Complaint (ULP) No. 929 of 2001 (Shri Balate) was working with Bank's Timber Market Branch wereas Complainant of Complaint (ULP) No. 930 of 2001 (Shri Kadam) as peon with Bank's Head Office. It is not controverted that election of Chairman and Vice-chairman of the Bank took place on 19th November 2001. Prior to election one Shri Ashokrao Salokhe was the Chairman and one Shri Madhavrao Patil Vice Chairman. Their group was in majority. In the election, group of Shri Salokhe went into minority, previous minority group came in to majority and then Shri Ashokrao Jadhav came to be elected as Chairman where as Smt. Shalabai Sarnaik as Vice Chairman of the Bank. Chief Executive

Officer then issued orders on 20th November 2001 transferring Clerk Shri Nalawade to Gargoti Branch, Clerk Shri Patil to Gadhinglaj Branch, Clerk Shri Balate to Bambavade Branch and peon Shri Kadam to Gadhinglaj Branch. Respective transfer orders say that they are transferred with effect from 21st November 2001 but it is nowhere stated that they are transferred on existing vacant posts as well as to whom they shall hand-over charge of their present posts.

4. It is case of the Complainant that elected Directors of the Bank elect Chairman and Vice Chairman from amongst themselves. Prior to election group of Shri Salokhe and Shri Patil was in majority. Some of the Directors from their group joined other Directors whereby the other Directors came in majority. Eventually, Shri Jadhav and Sou. Sarnaik came to be elected as Chairman and Vice Chairman respectively in the election held on 19th November 2001. They (the Complainants) were supporters of previous rulling party. Besides, newly Chairman and Vice Chairman treated them as supporters of previous ruling party. Newly elected Chairman and Vice Chairman, to teach a lesson to them, directed the Chief Executive Officer to transfer them.

5. It is further alleged by the Complainant that they are transferred on political consideration and for the reason that they belong to previous ruling party. Their transfers are altogether *malafide* one. About 20 employees who were supporters of previous Chairman and Vice Chairman are immediately transferred after the new Chairman and Vice Chairman came in power and that too deliberately to inconvenience places. Some employees who are suporters of new Chairman and Vice Chairman are transferred to Convenience places. Transfer orders do not contain any reason for their transfers. Those are not at all on administrative exigencies or management policy.

6. It is further alleged by the Complainants that they met newly elected Chairman and Vice Chairman with a request to cancel transfers but were threatened with dire consequences on the ground that they were helping and supporting previous ruling party. It is further alleged that the transfer orders are outcome of victimisation and are *malafide* one. Other employees are shown favouritism of partiality, regardless of merits.

7. On above averments, the Complainants have prayed for requisite declaration of unfair labour practices, direction to cancel their transfer orders and consequential reliefs.

8. Bank's Chairman and Chief Executive Officer filed their identical written statement at Exh. C-3 in all the complaints and traversed all material allegations made by the Complainants. They contended at the outset that none of the Complainants reported to the transferred placed and hence the complaints are liable to be dismissed on such ground alone. They further contended that there is approved and representative Union namely Bank Employees Union Eventually, the Complainants have to *locus standi* to file the complaints in individual capacity.

9. It is case of the Respondents that there were no two groups of Directors as alleged and Chairman and Vice Chairman were unanimously elected on 19th November 2001. There is no nexus between the election and the transfer. The Complainants filed false leave applications after issuance of transfer orders on the ground of illness but those were rejected. Even then, the Complainants did not report at the transferred place and filed complaints with political view. The very contents of the Complainants that they are supporters of previous Chairman and Vice Chairman establish that they are interested in elections of the Bank which is a serious misconduct and appropriate legal action will be taken against them by issuing chargesheets for such misconducts.

10. It is further case of the Respondents that all the Complainants are liable to be transferred as per convenience of the Bank. Chief Executive Officer has every right to transfer the employees and transfer is their incidence of service. Twenty transfers are made on administrative ground, are routine one and not at all *malafide* one. In addition, none of the Complainants met the Chairman and Vice Chairman for cancellation of their transfers and they were never threatened with dire consequences.

11. Thus the Respondents have come with a case that the transfers are on administrative grounds and routine one. There are no *malafides* whatsoever. Finally they prayed for dismissal of the complaints.

12. Considering rival pleadings, following points arise for my determination :—

(*i*) Whether the Complaints are maintainable in present from ?

(*ii*) Do the Complainants prove that their transfers are *malafide* one ?

(*iii*) Do the Complainants prove that the Bank has indulged in an unfair labour practice under Item 3 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act ?

(iv) What order ?

13. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) Yes.

(*iii*) Yes.

(*iv*) The Complaints are partly allowed.

Reasons

14. Before adverting to rival contentions, I must state that the Complainants filed Applications (Exh. U-2) under Section 30(*2*) of the M.R.T.U. and P.U.L.P. Act for directing the Respondents to temporarily withdraw their transfer orders, till decision of main complaints. Those applications were allowed on 22nd February 2002. The Bank challenged the interim order *vide* writ Petitions Nos. 1718 to 1721/2002 in the Hon'ble High Court. Those Writ Petitions were dismissed on 27th March 2002 with a direction to decide main complaints on or before 30th June 2002.

15. The Complainants have produced copy of their transfer orders and news paper cutting regarding election of Chairman and Vice Chairman of the Bank with list Exh. C-5. Later on they have produced copies of transfer order dated 6th December 2001 whereby Shri Gadgil is re-transferred from Gadhinglaj Branch to Sadar Bazar Branch, transfer order dated 29th November 2001 whereby Shri Mandar Patil is transferred from Rajarampuri Branch to Gadhinglaj Branch with effect from 1st December 2001 and again transferring him (Shri Mandar Patil) from Gandhinglaj Branch to Shivaji Peth Branch with effect from 3rd December 2001, with list Exh. U-7.

16. In rebuttal, the Bank has produced copies of letters sent to the Complainants for joining at the transferred places, copies of letters rejecting their leave applications and copies of 96 transfer orders made in the past.

17. It has also come on the record that the Bank has served chargesheets on all the Complainants on the ground that they failed to join at the transferred places and those enquiries are pending.

18. The Complainants made Applications (Exh. U-12) seeking permission to file affidavit in lieu of their examination-in-chief. Bank's Advocate Shri Jadhav gave no objection. Eventually, the Complainants were allowed to file affidavits. All of them were cross-examined on behalf of the Respondents.

19. The Bank examined its Chief Executive Officer at Exh. C-13 and three Branch Managers at Exh. C-16 to C-18. The Branch Managers are examined in support of Bank's Plea that two Complainants never joined at the transferre places whereas two worked for $^{1}/_{2}$ days and did not attend thereafter.

20. All the Complainants have replied in the cross-examination that they neither applied to the Bank for cancellation of the transfers nor joined the transferred places prior to presentation of the complaints. Considering such facts, Shri Jadhav, learned Advocates representing the Bank vehementaly argued that the complaints are not at all maintainable and are liable to be dismissed on this ground itself. In support of his arguments, he relied decision in *Shivaji More* V/s. *Estate Manager reported in 1996 (72) FLR at page 447.*

21. Shri Upadhye, learned Advocate representing the Complainants replied that the Complainants visited places of posting, gave joining reports but two of them were not allowed to join. Remaining two Complainants were allowed to work for $^{1}/_{2}$ days and then prevented from attending. They were replied that they will not be allowed to join unless withdrew the complaints. Therefore the Complainants cannot be thrown out at the thrashold itself. They have showed willingness to join at transferred place, *vide* pursis Exh. U-11.

22. Concerned Branch Managers have testified in terms of Bank's plea. Admittedly, the Complainants are served with chargesheet alleging failure to report at the transferred place and the enquiries thereof are pending. In my judgment, alleged misconduct is not the subject matter of the complaints. Any observations regarding this controversy will be transgressing upon his jurisdiction of Inquiry Officer. I therefore, retrain myself in adjudicating or commenting upon such controversy.

23. Advocate Shri Jadhav further submitted that the Complainants were holding transferrable posts. Appropriate remedy for cancellation of transfer is to file a representation and if the representation is rejected then they have no option but to carry out the order of transfer. For that end he relied on the decision in *Sheo Kumar Patel* V/s. *State of U.P. reported on 1992 (65) FLR at page 895.* In this division, decision of Hon'ble Apex Court in *Gujarat Electricity Board* V/s. *Atmaram* reported in *1989 (59) FLR at page 474 (SC)* is referred.

24. I am respectfully bound by the decisions relied by Advocate Shri Jadhav. Above two cases are not under the M.R.T.U. and P.U.L.P. Act. A *malafide* transfer of an employee is specifically stated to be an unfair labour practice under Item 3 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act. Consequently, I have to mainly decide as to whether transfer of the Complainants is an unfair labour practice under Item 3 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act. As such, above decisions are of no help to the Bank. It is held in Shivaji More's case (referred *supra*) that any inter departmental transfer does not attract Item 3 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act. Impugned transfer orders are not inter departmental but from one place to another. *Malafides* or *bonafides* thereof are to be decided on merits. As such, the complaints are maintainable. Accordingly, I answer Point No. 1 in the affirmative. The Bank Employees Union has not appeared. The complaint is not regarding Items 2 and 6 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act. Therefore, the Complainants cannot be non-suited on the ground of existence of an Union.

25. It has come in cross-examination of Branch Manager Shri Ghorpade (Exh. CW-4) that Complainant Shri Nalawade is son of Director Smt. Nalawade. The Complainants have come with a case that they were supporters of previous ruling party. Chief Executive Officer has affirmed in Affidavit (Exh. C-5) that the Complainants have filed complaints on instigation of previous Chairman and Vice Chairman, being their supporters. Thus, it is accepted by the Bank that the Complainants are supporters of previous management. Eventually, arguments of Advocate Shri Jadhav that the Complainants have failed to prove that they were supporters of previous management, needs to be repelled.

26. Advocate Shri Jadhav further argued that elections of Chairman and Vice Chairman are unanimous and hence theory of two groups of Directors, rivalary between them and political vindictiveness does not stand. However, Chief Executive Officer has categorically replied in the cross examination that minority group came in majority in the election, many Court cases are pending between them and they are on cross terms to each other.

27. Shri Balate has affirmed that he is nephew of Ex-Chairman of Shri Salokhe and his such version is not denied by the Bank. The Chief Executive Officer has simply pleaded his ignorance about the same. Consequently, there is no reason to disbelieve such version of Shri Balate.

28. It has also come on the record that one Shri Gadgil was working as clerk with Head Office. He as transferred *vide* order dated 20th November 2001 to Bank's Gadhinglaj Branch. He then filed Complaint (ULP) No. 931 of 2001 alongwith the Complainants. The Bank contested the same raising similar contentions like raised in these complaints. Later on the Bank transferred him from Gadhinglaj to Sadar Bazar Branch by order dated 6th December 2001. He was transferred on the next day of resuming duties at Gadhinglaj. Thus, he (Gadgil) has joined at Gadhinglaj Branch on 5th December 2001.

29. It has further come on record that one Shri Mandar Patil is grandson of Ex-Vice Chairman Shri Madhavrao Patil. He was transferred on 20th November 2001 from Head Office to Rajarampuri Branch. He was then transferred on 29th November 2001 to Gadhinglaj Branch. He was then transferred to Shivaji Peth Branch on 1st December 2001.

30. Advocate Shri Upadhye argued that there is no legal justification whatsoever for the repeated transfers of Gadgil and Shri Mandar Patil. Initially both of them were purposely transferred to inconvenient place *i. e.* Gadhinglaj and then again brought to Kolhapur City. Lack of any plausible justification for such frequent transfers amounts to legal *malafides.* It amounts to misuse of powers in bad faith. These two transfers will have to be considered while assessing Bank's plea of administrative exigencies.

31. Advocate Shri Jadhav replied that the later transfers cannot be considered as administrative exigencies of every transfer, are different one. No transfers were made in the past, after election. The Bank has not fixed any criteria and there are directions of Reserve Bank of India that an employee should not be continued for more period at one place.

32. In my judgment, pleas of legal *malafides* and transfer under the guise of following management policy cannot be decided by concentrating upon impugned transfer orders only. The Bank has produced previous 96 orders to show that impugned transfer are routine one. Legal *malafides* and alleged unfair labour practice has to be tested on anvil of objective circumstances. As such, past transfers of other employees as well as later changes in the transfers cannot be ignored. In addition, change in the ruling party and the fact that the Complainants are supporters of previous ruling party is background of the transfers and needs to be borne in mind. In addition, previous various transfers are also to be considered.

33. The Complainants have affirmed in the affidavits (Exh. U-13) in terms of their pleadings. They were much cross-examined on the point of there alleged willingness to join at the transferred place and refusal to allow them to join. The Bank has examined its three Branch Managers to show that the two Complainants never visited their transferred places to join.

34. At the costs of repeatition, I say that this aspect cannot be decided in either way in these complaints as enquiries thereof are pending. As such, evidence of concerned Branch Manager is of no importance to decide alleged unfair labour practices under Items 3 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act. Bank's Chief Executive Officer has deposed in terms of the written statement. He testified that all the Complainants are working with the Bank since 10 to 15 years, 22 transfers were made for administrative purposes on 20th November, 2001 and have no nexus with the election. He further clarified that Complainant Shri Nalawade was working at Head Office for 9 to 10 years prior to his transfer at Gargoti. Complainant Shri R. D. Patil was working at Head Office for 3 to 4 years. Complainant Kadam worked at Head Office for 5 to 6 months whereas Shri Balate for one year at Timber Market Branch. He further clarified that there is no rule to make transfers in particular month of a year and, in the past, many transfers are made all over the year. According to him reasons for effecting transfers are not stated in the transfer orders as it was not necessary. He replied in the cross examination that the only reason for effecting transfers of the Complainants is necessity of change and no employee should be kept at one place for more period.

35. Although, the Chief Executive Officer has deposed in examination in chief regarding period of working of respective Complainants with particular branches prior to their transfer, he has categorically replied in the cross examination that he is unable to state as to since when respective Complainants were working at respective branches prior to their transfer dated 20th November 2001. Thus the bank has not brought on record the tenure of respective Complainants at respective branches prior to their transfer. Eventually, ground of transfer that the Complainants were working at one place for more than period and hence were transferred, does not stand to reason.

36. Advocate Shri Upadhye pointed out that none of the branch Managers of the Bank to which the Complainants are transferred requested for additional staff or a substitute. None of the Complainants are transfer on vacant post. No reason is stated in the transfer order. Transfer orders do not say as to whom the Complainant should hand over the charge. Had there been a policy to transfer employees who have worked for more period at one place, transfers of Shri Gadgil and Shri Mandar Patil within a couple of days were unnecessary. Lack of justification for the transfers amounts to legal *malafides*. There is misse of powers in bad faith for collateral purpose.

37. Advocate Shri Jadhav replied that the Chief Executive Officer has power to make transfers as per By Laws of the Bank. Main criteria for transfers, from time to time is bank's convenience. There is no rule to effect transfer in a particular month. 22 transfers are made and transfers of the Complainants are not isolated. The transfers are routine one. In support of his arguments he relied on decision in *Janta Commercial Bank Ltd.* V/s. *Member, Industrial Court reported in 1996 Lab. I. C. at page 2812* and *Bhikhubha Balubhai Jadeja* V/s. *State of Gujarat* reported in *2001 I CLR at page 222.*

38. I am respectfully bound by both decisions relied by Advocate Shri Jadhav. Transferring large number of employees is one of the indication of administrative exigencies. However, in the present case, the facts are self eloquent. The Chief Executive Officer has stated that transfers of the Complainants were on administrative grounds but he replied in the cross examination that no minimum working period at one place was filed while transferring the Complainants. He is unable to state any reason as to why transfers are made as on 20th November 2001 itself. He is also unable to state specific reason about frequent transfers of clerk Shri Mandar Patil on 20th November 2001 from Head Office to Rajarampuri Branch, on 29th November 2001 from Rajarampuri Branch to Gadhinglaj Branch and further transfer waiting two days from Gadhinglaj to Shivaji Peth Branch. He is also unable to state specific reason for transferring Shri Gadgil from Gadhinglaj to Sadar Bazar Branch at the next date of joining at Gadhinglaj Branch. Thus it can be well said that the Complainants Shri Gadgil and Shri Mandar Patil are transferred for no reasons. The Chief Executive Officer has nowhere explained as to what was the administrative gain or convenince for effecting transfers immediately on the next date of election wherein there was change in power. Consequently, it can be well said that the election and the fact that the Complainants are supporters of previous ruling party has positive nexus with the transfers.

39. I must state that there cannot be direct evidence between the elections and the transfers. A fact is said be proved when after considering the matter before it, the Court either believes it to exist or considers its existance so probable that a prudent man ought, under the circumstance of the particular case to act upon a supposition that it exists. This interference will have be made considering the principles of preponderance of probabilities. The Bank has not led evidence regarding subjective administrative exigencies. It is vaguely contended that the transfers are on administrative grounds. The only reason is change and working for more period at one place. As those reasons are brought on record, I have no alternative than to enter into merits thereof. It is not brought on record as to since when the Complainants were working at the respective branches prior to their transfers. The Chief Executive Officer does not know their tenure at respective Branches. As such, his, explanation that the Complainant worked more period at one place is unworthy or credence. It appears that he has made the transfers without application of mind and for some ulterior reason.

Such inference coupled with the facts that the Complainants are supports of previous ruling party, election took place on 19th November 2001 wherein new party came in power and immediate transfers on 20th November 2001 effected-clerical establishes that the transfers are made on political grounds. It also amounts to legal *malafides* which would be covered by Item 3 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act.

40. No doubt, transfer is an incident of service and transfers are made in the past all over the years. The Chief Executive Officer has every right to effect transfers but such right is not absolute or unfettered and should to be exercised *bonafidely* and in good faith. *Malafide* means misuse of powers in bad faith for co-lateral purpose. There is no transparency in act of the Chief Executive Officer. He has made transfers from time to time and without justifiable reasons. Transfers are made within a couple of days and that too without any reason. It is abuse of powers amounts to legal *malafides* and covered under Item 3 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act As such, general plea that the transfers are on administrative grounds is untrustworthy and failed. On the contrary, the inference is otherwise. I am aware that Courts should be slow while interfering in the orders of transfers. But in the peculiar facts and circumstances, of this case, interference is certainly warranted.

41. In the background of above discussion, I hold that the Complainants have proved that their transfers are *malafide* one and it is an unfair labour practice under Item 3 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act. Accordingly, I answer Point Nos. 2 and 3 in the affirmative.

42. Before parting with this judgment, I must state that I was unable to decide the complaints on or before 30th June 2002 due to heavy work-load. I made every endeavour to decide them at the earliest.

43. To conclude I pass following order :—

Order

(*i*) All the Complaints are partly allowed.

(*ii*) It is declared that Respondent No. 1 has indulged in an unfair labour practice under Item 3 of Schedule-IV of the M.R.T.U. and P.U.L.P. Act.

(*iii*) Respondent No. 1 is directed to cease and desist from engaging in such unfair labour practice forthwith.

(*iv*) Respondent No. 1 is further directed to withdraw Complainant's transfer orders dated 20th November 2001 and post them at their previous places of work.

(*v*) A copy of this judgment be kept in other complaints.

(*vi*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 4th July 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 13 OF 2002—Shri. Shivaji Baburao Vadar, At Post Kumbharmath, Tal. Malvan, District Sindhudurg.—*Petitioner—Versus.*—Maharashtra State Road Transport Corporation, Sindhudurg Division, Sindhudurg, through its Depot Manager.—*Respondent.*

In the matter of Revision u/s. 44 of the MRTU & PULP Act, 1971.

CORAM.— C. A. Jadhav, Member.

Appearances.— Shri. D. N. Patil, Advocate and B. D. Manolkar Advocate for the Petitioner. Shri. M. G. Badadare, Advocate for the Respondent.

Judgment

1. This is a Revision by original Complainant Conductor challenging legality of judgement and order passed in complaint (ULP) No. 96/90 by Labour Court, Kolhapur, whereby relief of reinstatement with continuity of service and full back wages is refused by dismissing the complaint.

2. Admittedly, present Petitioner (hereinafter referred to as the Complainant) was in service of present Respondent (hereinafter referred to as the State Road Transport Corporation) as a conductor. The Corporation served chargesheet dated 16th February 1990 upon him under clauses 10, 11, 12 (b) and 35 of its Discipline and Appeal Procedure mainly alleging that he temporarily misappropriated Corporation's amount of Rs. 2860.50 while on duty on 4th February, 1990 on Malvan-Sangli route. The Complainant denied the charges and then an enquiry took place. The Enquiry Officer held that all charges levelled against the Complainant are proved. Ultimately, the Complainant was dismissed from service with effect from 3rd May 1990. The Complainant then filed above complaint on 10th May 1990, inter-alia, contending that the chargsheet is false and he never committed alleged misconducts. Domestic enquiry was simply a force and the Enquiry Officer acted as a prosecutor cum Judge. The enquiry is contrary to principles of natural justice and findings of the Enquiry Officer are perverse. In addition punishment of dismissal is shockingly disproportionate. Consequently, he prayed for reinstatement with continuity of service and full back wages.

3. The Corporation filed its written statement at Exh. 13 and traversed all material allegations made by the Complainant. It contended that the misconducts noted were grave and serious and therefore, a chargesheet was served upon him. The enquiry is altogether fair and proper and principles of natural justice were followed. Findings of the Enquiry Officer are legal one. Proved misconducts were grave and serious. As such he was rightly punished. Thus, the Corporation justified its action and prayed for dismissal of the complaint.

4. Learned Labour Court then framed issues at Exh. 17 and the parties went to the trial. The Complainant admitted legality and validity of the enquiry *vide* pursis Exh. U-19. None of the parties led oral evidence. The Corporation produced entire enquiry papers and Complainant default card.

5. Learned Labour Court, on perusal of evidence and hearing both parties, firstly held that findings of the Enquiry Officer are not perverse. It secondly held that proved misconduct of misappropriation though temporary one, cannot be said to be a minor of technical misconduct. It then held that the Complainant was punished twice for similar misconducts in the past. Finally, it held that the dismissal is not an unfair labour practice and dismissed the complaint *vide* judgment and order dated 26th December 2001. The same is challenged in this Revision.

6. I heard both advocates. Considering rival submissions, following points arise for my determination :—

(*i*) Whether finding of labour Court that findings of Enquiry Officer are fair and proper, is justifiable ?

(*ii*) Whether finding of Labour Court that punishment of dismissal is not shockingly disproportionate is justifiable ?

(*iii*) What order ?

7. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) Yes.

(*iii*) The Revision Application is dismissed.

Reasons

8. This being a Revision under section 44 of the M.R.T.U. and P.U.L.P. Act, it is not necessary to scrutinise the rival contentions meticulously. The only material question is whether documents on record are incapable of supporting impugned order. In other words, whether impugned order is perverse of justifiable.

9. It is not controverted that the Complainant was on duty on 4th February 1990 on Malvan-Sangli route, deposited Rs. 1000 only alongwith Ticket tray with Sangli Depot but did not resume duties on 5th February 1990. The sale of tickets was Rs. 2377. It was also noticed that sale of tickets worth Rs. 472.80 was not shown in the way-bill. Later on, he deposited amount with Malvan Depot on 15th February 1990.

10. Shri. Manolkar, learned advocate representing the Complainant canvassed that the Complainant became sick and his state of mind was improper. Eventually, he was unable to deposit upto-date amount. As such, there is no misappropriation either to temporary or otherwise. Even then, extreme penalty of dismissal is imposed. It is shockingly disproportionate. At the most, the Complainant can be held to be negligent.

11. Shri. Badadare, learned Advocate representing the Corporation replied that there is absolutely no evidence before the Enquiry Officer as well as Labour Court regarding Complainant's ill-health and improper state of mind. The misappropriation was deliberate. Conductor is the only source of income of the Corporation. Non-mentioning of tickets sold worth Rs. 472.80 ps. in the Pay-bill cannot be a simply a negligence. It was well pre-planned. Therefore, proved misconduct is serious one.

12. Considering overall facts and circumstances, it cannot be said that the Complainant was simply a negligent. There is nothing on record to show that he was sick and his state of mind was improper. I, therefore find that finding of the Enquiry Officer are rightly held to be proper. Accordingly, I answer Point No. 1 in the affirmative.

13. As regards proportionality of the punishment, Shri Manolkar submitted that the Complainant has deposited requested amount and there is no loss to the Corporation. Therefore, punishment of dismissal is harsh one.

14. Shri. Badadare replied that misappropriation is a serious misconduct although it may be temporary or otherwise. Amount thereof is not substantial. It is not minor or technical one. Therefore, punishment of dismissal in proper. He placed reliance on the decision of Hon'ble Apex Court in *Janata Bazar (South Kanara Central Co-op. Wholesale Stores Ltd.*) V/s. *Secretary, Sahakari Noukarara Sangli reported in 2000 II CLR at page 568.*

15. Proved misconduct, by any stretch of imagination, cannot be said to be minor or technical. On the contrary, it is serious one. It is held in Janata Bazar's case (supra) that when misappropriation is proved may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employee in service. It is also observed that there is no question of considering past record and it is discretion of the employer to consider the same in appropriate cases.

16. In the light of dictum of Hon'ble Apex Court, it cannot be said that punishment of dismissal is an unfair labour practice, as alleged. The Complainant was holding post of trust and confidence. His past record is connected with monetary misconducts. In each circumstances, his reinstatement in service will amount to extending misplaced sympathy to him. Thus, the labour Court has rightly held that proved misconduct is not minor or technical one and rightly dismissed the complaint. Accordingly, I answer Point No. 2 in the affirmative and pass following order.

Order

(*i*) The Revision Application is dismissed.

(*ii*) No order as to costs.

C. A. JADHAV
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 13th June 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 6 OF 1992—Bajarang Anna Salunkhe, At Malwadi, Post Bhilavadi, Taluka Tasgaon, Dist. Sangli.—*Complainant—Versus.*—Chief Executive Officer, Zilla Parishad, Sangli.—*Respondent.*

In the matter of Complaint u/s. 28 (*1*) read with items 5, 9 and 10 of Sch. IV of the M.R.T.U. & P.U.L.P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri. K. D. Shinde, Advocate for the Complainant.
Shri. P. A. Savant, Advocate for the Respondent.

Judgment

1. This is a complaint purported to be under section 28(*1*) read with items 5, 8 and 10 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971.

2. Admittedly, Regional Water Supply Scheme of Village Nandre-Vasagade situated within Tasgaon-Taluka, District Sangli was maintained by Sangli Sub-Division of Environmental Engineering Works, Department of Government of Maharashtra. It was handed over to the Respondent Zilla Parishad, Sangli with effect from 1st April 1994. Eventually, all workmen working under the water Supply Scheme were transferred on establishment of Respondents Zilla Parishad.

3. It is case of the Complainant that he was appointed as a Mazdoor on 1st July 1981 and worked under the Scheme since then. Zilla Parishad promoted him on the post of Plumber/ Fitter on 4th July 1984. He was then designated as Fitter from 5th May 1986 and worked as Fitter since then. He was orally terminated on 29th October 1986, then filed complaint (ULP) No. 242 of 1986 before Labour Court, Sangli wherein, *ex-parte* order was made to reinstate him. The Respondent got annoyed and temporarily reverted him, illegally by order dated 20th May 1988. His reversion is without enquiry, in violation of standing orders and hence unsustainable in law. He then approached the Zilla Parishad. He was assured with withdrawal of reversion order while confirming him in service.

4. Later on, the Complainant was confirmed by order dated 20th September 1991 on the post of Mazdoor and not on the post of Fitter. It is alleged by the Complainant that his reversion without enquiry is illegal. He is compelled to work as Mazdoor other workmen are confirmed on the posts on which they were working and hence the Zilla Parishad has engaged in unfair labour practices under items 5, 9 and 10 of Sch. IV of the M.R.T.U. & P.U.L.P. Act. It is also alleged that he received confirmation order on the post of Mazdoor on 9th October 1991 and the complaint filed on 8th January 1992 is within limitation.

5. Finally, the Complainant has prayed for declaration of requisits unfair labour practice, setting aside reversion orders dated 20th May 1988 and 20th September 1991 and direction to confirm him on the post of Fitter with effect from 20th May 1988.

6. The Zilla Parishad filed its written statement at Exh. C-5 and traversed some of the allegations made by the Complainant. It contended that the Complainant was serving as Mazdoor when the Scheme was handed over on 1st April 1984 and then brought on Converted Regular Temporary Establishment as Mazdoor from 1st April 1989, *vide* order dated 20th September 1991. The Complainant did not work as Fitter nor was competant to work as Fitter. Eventually, he was properly confirmed on the post of Mazdoor and not reverted. It is further case of the Zilla Parishad that the Complainant was incompetent to work on the post of Fitter and in-competent employee can be reverted. Thus, the Zilla Parishad justified its action and prayed for dismissal of the complaint.

7. Considering rival pleadings, following points arise for my determination :—

(*i*) Does the Complainant prove that he was promoted on the post of Fitter on 4th July 1984 ?

(*ii*) Does he further prove that he was reverted on the post of Mazdoor by order dated 20th May 1988 ?

(*iii*) Does he further prove that he ought to have been confirmed on the post of Fitter while taking on Converted Regular Temporary establishment ?

(*iv*) What order ?

8. My findings, on above points, are as under :—

(*i*) No.

(*ii*) No.

(*iii*) No.

(*iv*) The complaint is dismissed.

Reasons

9. It is not controverted that the Complainant filed Complaint (ULP) No. 242 of 1986 before Labour Court. Sangli wherein, an *ex-parte* interim order was made directing the Zilla Parishad remaintain *status quo* regarding Complainant's job till next date. As per the Complainant, he was appointed on the post of fitter as per Labour Court's interim order dated 29th December 1986. None of the parties have produced copies of interim order of learned Labour Court and pleadings thereof. Eventually, I have to proceed further as it is.

10. The Complainant has produced Panchayat Samiti's letters dated 1st December 1987, 20th May 1988 and confirmation order dated 20th September 1991, with list Exh. U-6. Those documents are admitted by the Respondent. He had not lead oral evidence. The Zilla Parishad produced copies of list of transferred employees, Complainant's letter of exercising option to fix his scale with effect from 1st January 1996 and copy of concerned page of his Service Book with list Exh. C-12. It too did not lead oral evidence.

11. List dated 31st March 1984 containing names of employees transferred to Zilla Parishad shows that the Complainant was working as Mazdoor when the secheme was transferred to Zilla Parishad. Letters dated 1st December 1987 and 20th May 1988 designate the Complainant as Fitter.

12. Shri. Shinde, learned advocate representing the Complainant argued that Complainants desgination as Fitter in three letters addressed to him establishes that he was working as Fitter. Eventually, his appointment on the post of Mazdoor is reversion. It is stigma without enquiry and is, therefore illegal.

13. Shri. Savant learned advocate representing the Zilla Parishad replied that mere desgination of the Complainant that he is a Fitter does not amount to a promotion. The Complainant was shown as Mazdoor when the Scheme was transferred. Alleged order dated 4th July 1984 promotting the Complainant on the post of fitter is not produced. Therefore, it cannot be presumed that he was promoted. As such, confirmation on the post of Mazdoor is quite legal and proper.

14. The Complainant alleged unfair labour practice under items 5, 9 and 10 of Sch. IV of the M.R.T.U. and P.U.L.P. Act. There are neither pleadings nor evidence regarding favouritism or partiality to one set of workers regardless of merits or employing physical force by the Zilla Parishad. As such, no case is made out in respect of unfair labour practice under item 5 and 10 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971.

15. Burden lies on the Complainant to prove that he was promoted on the post of Plumber/ Fitter on 4th July 1984. There cannot be an oral promotion as the Zilla Parishad is a local body. There is no explanation whatsoever for non-production of alleged promotion order. In such circumstances, mere designation of the Complainant as a Fitter, in the eyes of law, is of no consequence to hold that he was promoted on higher post. The Complainant ought to have produced satisfying and convincing evidence. But the facts are otherwise. I, therefore, find that he has failed to prove that he was promoted. Accordingly, I answer Point on 1 in the negative.

16. It consequently, follows that question of his reversion does not survive. Letter dated 20th May 1988 nowhere spells that he is reverted. It is stated in letter dated 20th May 1988 that the Complainant has not worked as fitter since November 1986. List dated 31st March 1984 says that he was working as Mazdoor. As such, in any case, it cannot be accepted that the Complainant was reverted. Accordingly, I answer Point No. 2 in the negative.

17. In the light of above discussion, and finding on Points No. 1 and 2, it cannot be accepted that Complainant ought to have been confirmed on the post of Fitter. Accordingly, I answer point No. 3 in the negative and pass following order :—

Order

(*i*) The complaint is dismissed.

(*ii*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 29th June 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———————

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 344 OF 1995.—Shri Sanjay Shivaji Powar, At post Sawarde, Tal. Hatakanangale, Dist. Kolhapur.—*Complainant—versus.*—Executive Engineer, Maharashtra State Electricity Board, Gramin Vibhag No. 1, Tarabai Park, Kolhapur—*Respondent.*

In the matter of Complaint u/s. 28 (*1*) read with item Nos. 9 and 10 of Sch. IV of the MRTU & PULP Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri M. G. Badadare, Advocate for the Complainant.

Shri R. G. Rane, Advocate for the Respondent.

Judgment

1. This is a complaint purported to be under Section 28(*1*) read with items 9 and 10 of Sch. IV of the MRTU and PULP Act, 1971.

2. The Respondent—Maharashtra State Electricity Board had a vacancy in the category of peon. It requested District Social Welfare Officer, Kolhapur to recommend names of suitable candidates for such post belonging to 'Wadar' caste which is a recognised as "vimukta" (विमुक्त) caste. The Complainant was recomended then interviewed by Board and found suitable for the post. The Board then gave appointment order dated 27th October 1994 to the Complainant appointing him on the post of peon and asked him to join duties on 14th November 1994. The Board then informed him by letter dated 14th November 1994 that his appointment on the post of peon is stayed until further orders.

3. The Complainant then filed above complaint on 2nd November 1995, *inter alia* contending that he reported for duty on 14th November 1994 but was informed that his appointment order is stayed until further orders. He is eligible to be appointed on the post of peon and is certified to be mentally and physically fit by the Civil Surgeon, Kolhapur. Any affected person can raise an industrial dispute under section 2 (*k*) of the I. D. Act and hence this Court has jurisdiction to entertain the complaint. Board's refusal to allow him to join duties, despits due selection and appointment order is an unfair labour practice. It is further alleged that he was promised favourable consideration, from time to time but was not allowed to join.

4. On above averments, the Complainant has prayed for requisite declaration of unfair labour practice, direction to employ him with effect from 27th October 1994 pay wages from such date and other consequential reliefs.

5. The Respondent - Excutive Engineer of the Board filed his written statement at Exh. C-6 contending at the outset that the Complainant is not a 'workman' as defined under section 2(*s*) of the I. D. Act. He was never physically employed and is not entitled to resort to provisions of the MRTU and PULP Act, 1971. As such, keeping Complainant's appointment orders in abeyance and not employing him cannot be unfair labour practice under item 9 of Sch. IV of the MRTU and PULP Act.

6. It is further case of the Respondent that higher authorities directed him to fill up backlog as well as employ legal heirs of deceased employees. He, therefore bonafidely kept Complainant's appointment order in abeyance until further orders. Finally, he prayed for dismissal of the complaint.

7. Considering rival pleadings, following points arise for my determination :—

(*i*) Does the Complainant prove that he is 'employee' as defined under Sec. 3(*5*) of the MRTU and PULP Act ?

(*ii*) Whether this Court has jurisdiction under the MRTU and PULP Act to entertain the complaint ?

(*iii*) If finding of point Nos. 1 and 2 is in the affirmative, does the Complainant prove that the Respondent has engaged in unfair labour practice under item 9 of Sch. IV of the MRTU and PULP Act ?

(*iv*) What order ?

8. My findings, on above points, are as under :—

(*i*) No,

(*ii*) No,

(*iii*) Does not survive,

(*iv*) The complaint is rejected.

Reasons

9. None of the parties have led oral evidence. The Complainant has produced copies of his appointment order dated 27th October 1994 and Respondent's letter dated 14th November 1994, with list Exh. U-6. Other documents show that he belongs to "vimukta" (विमुक्त) caste, was called for interview by the Board and then made representations to allow him to join the services.

10. A paramount question arises at the outset as to whether the Complainant is an "employee" as defined under section 3(*5*) of the MRTU and PULP Act and is the complaint can lie under the MRTU and PULP Act ?

11. Shri Badadare, learned Advocate representing the Complainant argued that letter of appointment constitutes an agreement between the Complainant and the Board. Its breach attracts item 9 of Sch. IV of the MRTU and PULP Act. For that end he relied on a decision in *Cricket Club of India and Others* v/s. *Mrs. Baljeet Shayam and others reported in 1998 I CLR at page 570 (Bom. H. C.)*. He further added that the Board is bound by its promise in the letter of appointement and hence the Complainant is entled to join the services. Now, the Board cannot deny the appointment to the Complainant. In support of his such argument, he relied on decision in *Manoj Kumar Mishra* v/s. *Mahaprabhandhak reported in 1996 (73) FLR at page 1123* (Allahabad H. C.) and *Commissioner of Higher Education* v/s. *Prajapati Amrutbhai reported in 1995 I CLR at page 504 (Guj. H. C.)*

12. Shri Rane, learned Advocate representing the Respondent replied that the appointment order never materialised. Therefore, the Complainant did not gain status of an employee under the MRTU and PULP Act. The Complainant was not actually employed. He then took me through the definition of a workman under section 2 (*s*) of the I. D. Act and submitted that the Complainant was never physically employed and hence is not a "workman" under the I. D. Act. For that end he relied on a decision of Hon'ble Appex Court in *Bongalgaon Refinery* v/s. *Samjuddin Ahmad reported in 2002 Lab. I. C. at page 545.* He further added that no right has accrued to the Complainant merely because he is selected. For that and he placed reliance on another decision of Hon'ble Apex Court in *S. Renuka and others* v/s. *State of Andhra Pradesh reported in 2002 (2) Supreme Court Today at page 618.*

13. It is not controverted that the Respondent issued letter dated 14th November 1994 to the Complainant prior to resuming on duty. It is own case of the Complainant that he reported for duty as per appointment order but was told that appointment order is stayed until further orders.

14. I am respectfully bound by decisions relied by both advocates. It is held in *Cricket Club of India's* case that letter of appointment containing a procedure for terminating services is an agreement and failure to follow procedure therein for termination is its breach, attracts item 9 of Sch. IV of the MRTU and PULP Act and is an unfair labour practice. Consequently, it has to be held that appointment order dated 27th October 1994 is an agreement as contemplated under item 9 of Sch. IV of the MRTU and PULP Act, 1971.

15. Section 28 of the MRTU and PULP Act entitles any Union or any employee or any employer or any Investigating Officer to file a complaint before the Court competent to deal with such complaint. As such, the Complainant has to first establishment firstly that he is an employees as defined under section 3(*5*) of the MRTU and PULP Act. In *Cricket Club's* case Respondent No. 1 therein joined the services, was confirmed in service and then was terminated. Thus, she was in employment. In the present case, the Complainant was not actually employed. As such, observations therein are of no help to the Complainant to prove that he is an employee under the MRTU and PULP Act, 1971.

16. In Bongalgaon Refinery's case (supra) it is held that the Respondent therein had not entered the employment and therefore referring a dispute under section 10 of the I. D. Act, based on assumption that he had entered the services and then was removed from service, suffered from material infirmity. Thus, entering into actual employment was necessary for referring a dispute under section 10 of the I. D. Act.

17. Letter of appointment, in the eyes of law is a prospective appointment or contract to employ the Complainant. Mere existance of such contract does not constituts a relationship of master and servant between the Respondent and the Complainant. Such relationship is not constituted until the contract is performed and the Complainant is actually employed. Therefore, a mere contract to employ the Complainant does not make him a workman within the meaning of section 2(*s*) of the I. D. Act. It is held in *Odeon Cinema* v/s. *Workers of Sagar Talkies reported in 1954 II LLJ at page 314 (Madras H. C.)* as under:–

> "A mere contract to employer the workers does not constitute the persons who is agreed to be taken into employment, a workman within the meaning of S. 2(*a*) of the Act. The mere existance of a contract to employ does not contitute a relationship of master and servant between the employer and the person who has been promised employment. Until this contract is performed and the servant is actually employed, the relationship of employer and workman is not constituted with the result that any differences between the parties to the contract must be resorved in the ordinary Courts by a suit for damages and does not give rise to an industrial dispute."

18. In the background of above observations, I have no alternate than to hold that the Complainant is not a workman within the meaning of Sec. 2(*s*) of I. D. Act and consequently an employee under section 3(*5*) of the MRTU and PULP Act. Accordingly, I answer Point No. 1 in the negative.

19. I am respectfully bound by other decisions relied by Advocate Shri Badadare. Those are not under the MRTU and PULP Act. An illegal act may not be an unfair labour practice. It is held in *Rajbahadur Poona Mills* v/s. *Girni Kamgar Sangh reported in 1985 I CLR-188* that

an employer cannot be said to have indulged in an unfair labour practice merely because contravenes a provisions of some act or even indulges in an illegal act. It is further pointed out that remedy for challenging the act which is illegal, but does not amount to an unfair labour practice is diefferent and not by way of complaint under the MRTU and PULP Act. In the present case, the Complainant cannot be held to be an employee under section 3(*s*) of the MRTU and PULP Act. Eventually, no complaint could lie under the MRTU and PULP Act. I, therefore, have no juridiction to entertain the same. Accordingly, I answer Point No. 2 in the negative.

20. A prospective employment, if the same does not in fact materialised the appointee thereof cannot be 'workman' under the I. D. Act. The Complainant is simply an appointee and not a workman. Eventually, the Complainant under the MRTU and PULP Act is not maintainable and question of unfair labour practice under item 9 of the Sch. IV of the MRTU and PULP Act does not survive. I answer point No. 3 accordingly.

21. In the background of above discussions and finding, the Complainant needs to be non-suited under the MRTU and PULP Act. Board's failure to implement the appointment order cannot be commented in either way as to whether it is an unfair labour practice or not as the Complainant is not an employee under the MRTU and PULP Act. Therefore, the complaint is to be rejected rather than dismissing the same.

22. To conclude, I pass following order :—

Order

(i) The complaint is rejected.

(ii) The parties shall bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 29th June 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———————

BEFORE THE MEMBER INDUSTRIAL COURT AT KOLHAPUR

COMPLAINT (ULP) No. 375 of 1999—Shri Jetappa Kechappa Motagi G-2-46/4, At post Alore, Tal. Chiplun, District Ratnagiri—*Complainant*—Versus.—(1) The Sub-Div. Engineer, Koyana Costruction Sub-Division No. 2 (C), Alore, Tal. Chiplun, District Ratnagiri.—*Respondent No. 1.* (2) The Executive Engineer, Koyana Costruction Division No. 2 Alore, Tal. Chiplun, District Ratnagiri.—*Respondent No. 2.* (3) The Supdt. Engineer, Koyana Costruction Circle, Satara.—*Respondent No. 3.*

In the matter of complaint u/s. 28*(1)* read with items 9 and 10 of Sch. IV of the MRTU & PULP Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri A. M. Patwardhan, Advocate for the Complainant.

Shri S. R. Pisal, Asstt. Government Pleader for the Respondents.

Judgment

1. This is a complaint under section 28(*1*) read with items 9 and 10 of Sch. IV of the MRTU and PULP Act.

2. Admittedly, the Complainant started working under Respondent's daily wages establishment as a "Tapkari" from 3rd June 1971. He used to break big stones and further to mold them while working as a "Tapkari". The Government of Maharashtra then took him on Converted Regular Temporary Establishment on the post of Mazdoor from 3rd June 1976, *vide* order dated 19th July 1980.

3. It is case of the Complainant that post of 'Tapkari' is Class III post, whereas post of Mazdoor is a Class IV. Kalelkar Award is applicable to the Respondents and therefore, he is entitled to be enrolled on Converted Regular Temporary Establishment on completion of 5 years' service on the post on which he was employed. Even then, he was enrolled on the post of Mazdoor. Such act of the Respondents is contrary to provisions of law as well directions in the Kalelkar Award. He made representations time and again to enroll him on the post of Tapkari (Class III) or any other equivalent post. But the Respondents rejected his request.

4. It is further alleged by the Complainant that other employees working on the post of 'Tapkari' are given on other equal grade or upper grade. However, he alone is not given equal or upper grade.

5. It is also alleged by the Complainant that's refusal to enroll him on the post of 'Tapkari' or on a post of equal grade on Converted Regular Temporary Establishment is a continuous cause of action and therefore, the complaint is within limitation.

6. On above averments, the Complainant has prayed for requisite declaration of unfair labour practices, directions and other consequential benefits.

7. Respondent No. 2 Executive Engineer filed has written statement at Exh. C-9 and traversed all material allegations made by the Complainant. He contended that post of 'Tapkari' was not amongst post listed in pay rules of 1964. The Complainant was appointed as a Mazdoor on 3rd June 1976 and then on completing 5 years continuous service, was taken on converted regular temporary on the post of Mazdoor. The Complainant was never paid scale of Class III post. As such, he has not indulged into any unfair labour practice. He also took a plea of limitation and finally prayed for dismissal of the complaint.

8. Considering rival pleadings, following points arise for my consideration :—

(*i*) Does the Complainant prove that he was working on the post 'Tapkari' (Class III) from 3rd June 1971 ?

(*ii*) Does the Complainant prove that he ought to have been enrolled on the post of 'Tapkari' or of equal grade on converted regular temporary establishment as per provisions of Kalelkar Award ?

(*iii*) Does the Complainant prove that the Respondents have indulged into an unfair labour practice under item 9 of Sch. IV of the MRTU and PULP Act ?

(*iv*) What order ?

9. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) Yes.

(*iii*) Yes.

(*iv*) The complaint is allowed.

Reasons

10. The Complainant has examined himself at Exh. UW-1 and produced various documents regarding his grievance and correspondence thereof with list Exh. U-7. The Respondents did not lead oral evidence but produced correspondence regarding Complainant's grievances and some other orders.

11. It is case of the Complainant that the Respondents are bound by directions of Kalelkar Award, non-compliance thereof amounts of failure to implement and Award, which is an unfair labour practice under item 9 of Sch. IV of the MRTU and PULP Act, 1971.

12. Shri Patwardhan, Learned Advocate representing the Complainant argued at the outset that the Complainant made correspondence with higher authorities regarding injustice while appointing him on converted regular temporary establishment. Correspondence produced by Respondent No. 2 himself with list Exh. C-7, goes to show that the Complainant was agitating his grievances time and again but it was nowhere considered. Obligations in Kalelkar Award are continuing one and non-compliance there of is of recurring nature. As such, cause of action is recurring one and the complaint is within limitation. No serious arguments were advanced by Learned Asstt. Government Pleader on the point of limitation.

13. It is held in *Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd.* V/s. *Maharashtra State Co-op. Cotton Growers Marketing Federation Employees* Union reported in 1992 I CLR at page 350 that unfair labour practices covered by items 6 and 9 are the continuing or recurring. Eventually, it cannot be accepted that the complaint is barred by limitation. On the contrary, it is within limitation as the cause of action is continuing or recurring one. With such initial finding, I proceed further.

14. It is not controverted that the Government took the Complainant on converted regular temporary establishments the post of Mazdoor from 3rd June 1976, *vide* order dated 19th July 1980. Thus, it implies that he was working from 3rd June 1971.

15. The Complainant deposed that he started working as 'Tapkari' on daily wages from 3rd June 1971. The fact of his working on such post is well established by letter dated 20th January 1987 sent by the Superintending Engineer, Kolhapur to the Secretary of Irrigation Department. I, therefore, have no difficulty in holding that he worked on the post of 'Tapkari' from 3rd June 1971. Accordingly, I answer Point No. 1 in the affirmative.

16. Correspondence produced by Respondent No. 2 with Exh. C-7 says that the Complainant is worked as Tapkari from 3rd June 1971 to 30th April 1978 and under Secretary to Government replied on 29th April 1987 that scale for post of 'Tapkari' is not covered by Maharashtra Civil Services (Revised Pay) Rules, 1978 and hence a fresh proposal to take him on the post of equal scale be sent. Accordingly, it was replied that post of driller has equal scale and the Complainant be taken on drillers' post on converted regular temporary establishment. Ultimately, it was replied that the Complainant was doing work almost like of mazdoor and hence cannot be taken on the post of driller.

17. Advocate Shri Patwardhan argued that the then Under Secretary to Government directed to revise said proposal for equal post in the scale of 'Tapkari'. Accordingly, the proposal was sent to take him on the post of driller. It was also pointed out that some other employees were taken on converted regular temporary establishment in the equal scale and therefore the Government ought to have taken the Complainant on the post of equal scale. Government's letter dated 11th August 1999 is totally arbitrary and an outcome of only conjunctures. All sub-ordinate Officers have opined that post of driller is equal in scale and the Complainant was skilled worker. The Complainant cannot be blamed or faulted with for non-creation of Tapkari's post in the revised pay rules. The Complainant has worked on Tapkari's post *i.e.* as a skilled worker from 3rd June 1971 to 30th April 1978. Therefore, he was entitled to be taken on converted regular temporary establishment on same post or in any case on post of equal cadre. Failure to take him on post of equal cadre is an unfair labour practice.

18. Learned Assistant Government Pleader Shri Pisal replied that post of Tapkari was not included in the revised Pay Rules of 1978. As such, the Complainant is rightly taken as Mazdoor on converted regular temporary establishment. He further added that one servagaud was a Tapkari who was ordered to be taken as Mazdoor on converted regular temporary establishment by order dated 7th March 1979. Consequently, the Complainant is not entitled to any relief.

19. Shri Patwardhan by way of re-joinder replied that Sarvagaud's order says that he was reverted as mazdoor by abolishing Tapkari's post with effect from 10th July 1972. The same is neither judicial nor legal one but simply administrative one and nowhere helps the Respondents. The Complainant ought to have been taken on converted regular temporary establishment atleast on the post of equal cadre. Mazdoor's post is Class IV post whereas the Complainant was working as a Tapkari on Class III post. Kalelkar Award no where permits reversion of a worker on post of lower category while taking him on converted regular temporary establishment.

20. There is substantial merits in the arguments of Advocate Shri Patwardhan. The Complainant cannot be faulted with or blamed for non-creation of post of Tapkari in the Revised Pay Rules of 1978. As per Kalelkar Award, if an employees has worked on a post of Class II category and that too for a substantial period during initial 5 years when he has to be taken on converted regular temporary establishment on same post. Unfortunately, revised pay rules of 1978 has no post of Tapkari. Consequently, it was obligation of the Respondents atleast to take the Complainant on the post of equal scale so as to avoid injustice. Otherwise, it will amount to reversion. It is settled law that revision can be made only as a punishment. Thus, the Complainant is practically reverted and that too illegally. It is impermissible in law. The Complainant ought to have been enrolled or taken, in any case, on the post of equal grade of Tapkari on converted regular temporary establishment. Accordingly, I answer Point No. 2 in the affirmative.

21. In the light of above discussions and findings, I find that the Respondents have failed to discharge obligation in Kalelkar Award. Refusal to take him on converted regular temporary establishment on the post having equal scale like of the post of Tapkari is an unfair labour practice.

22. Order reverting Sarvagaud is administrative one and nowhere justifies Respondent's action. Observations in final reply dated 11th August 1999 that the Complainant was doing work almost like of Mazdoor have no justification, especially when the Complainant was working on a Class III post from 3rd June 1971. All sub-ordinate officers have accordingly endorsed it. Besides, Under Secretary has directed by letter dated 29th April 1987 to send revised proposal of the Complainant for taking him on the post of equal scale on converted regular temporary establishment. Consequently, I answer Point No. 3 in the affirmative.

23. To conclude, I pass following order.

Order

(*i*) The complaint is allowed.

(*ii*) It is declared that the Respondents have engaged in an unfair labour practice under item 9 of Sch. IV of the MRTU and PULP Act by not taking the Complainant on Converted Regular Temporary Establishment on the post of equal scale of the post of Tapkari.

(*iii*) The Respondents are directed to cease and desist from commiting such unfair labour practice forthwith.

(*iv*) The Respondents are further directed to take the Complainant on the post of equal scale of the post Tapkari, with effect from 3rd June 1976 and pay due arrears to him within one month from to-day.

(*v*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
dated the 13th June 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———————

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 388 OF 1995.—Shri Vijay Anant Muzumdar, 1731/21, New Mahadwar Road, Kolhapur—*Petitioner Versus* Superintending Engineer, Irrigation Circle, Zonal Office, Kolhapur, Sinchan Bhavan, Tarabai Park, Kolhapur—*Respondent.*

In the matter of Revision u/s. 44 of the MRTU and PULP Act, 1971.

CORAM.— C. A. Jadhav, Member.

Appearances.— Smt. N. A. Ramtirthakar, Advocate for the Petitioner.

Shri. S. R. Pisal, Assistant Govt. Pleader for the Respondent.

Judgment

1. This is a Revision by original Complainant challenging legality of judgement and order passed in complaint (ULP) No. 34 of 1992 by the Labour Court, Kolhapur, whereby relief of reinstatement with continuity of service and back wages is refused by dismissing the complaint.

2. Admittedly, present Petitioner (hereinafter referred to as the Complainant) was appointed by present Respondent (hereinafter referred to as the Superintending Engineer) as a Choukidar on daily wages from 20th November 1978. Superintending Engineer then terminated his service with immediate effect from 9th July 1979 by order of same date.

3. The above complaint was filed on 9th March 1992 alleging that the Complainant put continuous service of more than 240 days and his termination is in violation of provisions of section 25 F of the I. D. Act. Besides, his two juniors are re-employed. In addition, his termination is contrary to provisions of section 25 G of the I. D. Act. It is further alleged that the Complainant raised an industrial dispute before the Assistant Commissioner of Labour at Kolhapur on 19th December 1980 and conciliation proceeding is still pending. He then prayed for condonation of delay. Finally, he prayed for reinstatement with continuity of service and other consequential reliefs.

4. The Superintending Engineer filed written statement at Exh. C-8 contending at the outset that the complaint is filed after expiry of 12 years and is barred by limitation. He further contended that the Complainant did not work for 240 days in one year and it was not necessary to pay retrenchment compensation while terminating the Complainant. No waiting list was prepared and there is no violation of sec. 25 G of the I. D. Act. Finally, he prayed for dismissal of the complaint.

5. The Labour Court, then framed issues at Exh. 9 and the parties went to the trial. The Complainant produced his appointment orders, notices of Government Labour Officer, Kolhapur and representation made in the year 1990 to the Superintending Engineer to reinstate or re-employ him. No oral evidence was adduced by the Superintending Engineer.

6. Learned Labour Court, on perusal of evidence and hearing both parties, held that the Complainant has not put in continuous service of 240 days prior to his termination and therefore, plea of non-compliance of provisions under section 25 F of the I. D. Act, fails. It also held that no grounds are made out for condoning in-ordinate delay of 12 years. Ultimately, it dismissed the complaint by judgment and order dated 15th July 1995. The same is challenged in this Revision.

7. I heard both sides. Considering rival submissions, following points arise for my determination :—

(*i*) Whether the Complainant has proved that he put continuous service of 240 days in the preceding 12 months prior to his termination ?

(*ii*) Whether impugned order dismissing the complaint is justifiable ?

(*iii*) What order ?

8. My findings, on above points, are as under :—

(*i*) No.

(*ii*) Yes.

(*iii*) The revision application is dismissed.

Reasons

9. This being a revision under section 44 of the MRTU and PULP Act, it is not necessary to scrutinise the rival contentions meticulously. The only material question is whether documents on record are incapable of supporting impugned order. In other words, whether impugned order is perverse of justifiable.

10. Smt. Ramtirthakar, learned advocate representing the Complainant tried to canvas that the Complainant has put in continuous service of 240 days preceding his termination. However, the Complainant himself has replied in cross-examination that he did not work for 240 days in a year. Consequently, it cannot be accepted that the termination is in violation of mandatory provisions of section 25 F of the I. D. Act. It appears from the appointment orders that he was appointed as Choukidar on daily wages and his services were terminated prior to completion of 240 days of continuous service. I, therefore, answer Point No. 1 in the negative.

11. As regards delay, it is striking to note that the Complainant made representation for the first time in the year 1990 and was not deligent for 11 years. As such, learned Labour Court has rightly held that no case is made out for condonation of delay. There is absolutely no convincing evidence on record about re-employment of his juniors. As such, learned Labour Court was well justified in dismissing the complaint. Accordingly, I answer Point No. 2 in the affirmative.

12. To summarise, the Complainant has not put in continuous service of 240 days in a year and had no vested right of continuation in employment. Besides, he was altogether negligent for 11 years after his termination. Considering such facts, proposal was not sent to take him on converted regular temporary establishment. As such, there was no unfair labour practice on the part of the Superintending Engineer. Impugned decision does not spell of arbitrariness or perversity. Thus, no interference is called for and the revision application is liable to be dismissed.

13. Finally, I pass following order :—

Order

(i) The Revision Application is dismissed.

(ii) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 25th June 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———————

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 109 OF 1994.—Shri Pandurang Bandu Suvase, A/p. Yelave, Taluka Tasgaon, District Sangli—*Petitioner Versus* The Divisional Controller, Maharashtra State Road Transport Corporation, Sangli Division, Sangli—*Respondent.*

In the matter of revision u/s. 44 of the MRTU and PULP Act, 1971.

CORAM.— C. A. Jadhav, Member.

Appearances.— Shri. M. S. Topkar, Advocate for the Petitioner.

Shri. N. A. Kulkarni, Law Officer for Respondent.

Judgment

1. This is a Revision by original Complainant Conductor challenging legality of order passed below Exh. U-8 in complaint (ULP) No. 225 of 1989, whereby relief of restraining the Respondent—Corporation to take action on show cause notice dated 25th January 1992 of his proposed dismissal till decision of main complaint, is refused.

2. Admittedly, present Petitioner (hereinafter referred to as the Complainant) was chargesheeted on 17th March 1987 by present Respondent (hereinafter referred to as the State Road Transport Corporation). Then an enquiry took place and he was dismissed from service by order dated 2nd September 1989. He then filed above complaint before Labour Court, Sangli on various grounds alleging unfair labour practice and prayed for reinstatement with continuity of service and full back wages. He also made an interim application (Exh. U-2) under section 30(*2*) of the MRTU and PULP Act, 1971, whereon, an *ex-parte* order was passed directing the Corporation to allow him to join duties until further orders with show cause notice. The Corporation contested the complaint by filing day-*cum*-written statement (Exh. C-2). Learned Labour Court, after hearing both parties allowed interim application (Exh. U-2) and continued *ex-parte* order till decision of main complaint.

3. It has also come on the record that the Complainant was facing another enquiry as per chargesheet dated 27th July 1989 *i.e.* prior to his dismissal dated 2nd September 1989. The same was completed and he was served with a show cause notice dated 25th January 1992 to show cause as to why he should not be dismissed from service.

4. The Complainant then filed another interim application (Exh. U-8) under section 30(*2*) of the MRTU and PULP Act contending that findings of the enquiry initiated as per second chargesheet dated 27th July 1989, are perverse. He joined the duties as per interim order passed below Exh. U-2 and therefore, old enquiry was opened. His dismissal was dated 2nd September 1989 nowhere says that the Corporation has reserved right to take appropriate action on the basis of chargesheet. Consequently, he prayed that the Corporation be restrained from taking any action as per show cause notice dated 25th January 1992 proposing his dismissal, pending the hearing and final disposal of main complaint.

5. The corporation objected the application *vide* reply Exh. C-10 contending that proposed dismissal as per show cause notice dated 25th January 1992 does not amount to re-dismissal and justified its action.

6. Learned Labour Court, on hearing both sides, held that second interim application (Exh. U-8) is not maintainable, accepted plea of the corporation and rejected the same by order dated 3rd June 1994. The same challenged in this Revision.

7. I heard both sides. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned order dismissing second interim application (Exh. U-8) is justifiable ?

(*ii*) What order ?

8. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) The Revision Application is dismissed.

Reasons

9. It needs to be stated at the outset that findings of the Enquiry Officer regarding misconducts alleged in the chargesheet dated 17th March 1987 and consequential dismissal order dated 2nd September 1989 was subject matter of the complaint. The enquiry of second chargesheet dated 27th July 1989 was already pending when the Complainant was dismissed for first Chargesheet by order dated 2nd September 1989. No doubt, section 30(*2*) of the MRTU and PULP Act empowers the Court to pass such interim order as it deems just and proper but the controversy must be the subject matter of the complaint. Section 32 of the MRTU and PULP Act does not enlarge jurisdiction of the Court beyond what is confered on it by other provisions of the Act. As such, subject matter of second interim application (Exh. U-8) was second chargesheet, finding thereof and proposed dismissal. It was not subject matter of original complaint. Therefore Learned Labour Court was right in holding that second interim application (Exh. U-8) is not maintainable. Even otherwise, interim order passed below application Exh. U-2 was not a blanket one but was restricted to dismissal order dated 2nd September 1989 only. Consequently, the corporation was well justified in issuing a show cause notice of proposed dismissal on the basis of proved miscounducts as per second chargesheet. I, therefore, find that Learned Labour Court was well justified in rejecting the second interim application (Exh. U-8). Accordingly, I answer point No. 1 in the affirmative.

10. It also needs to be clarified that impugned order was stayed by my Learned Predecessor on 8th July 1994, until further orders. Eventually, the Complainant continued to be in service. Later on, he has retired on 31st May 1996 on account of superannuation. Thus, in any case, the Complainant continued to be in service till superannuated.

11. Finally, I pass following order :—

Order

(*i*) The revision application is dismissed.

(*ii*) R. and P. be sent to Labour Court, Sangli forthwith.

(*iii*) Parties to appear before Labour Court, Sangli on 17th August 2002.

(*iv*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 3rd July 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———————

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 22 OF 2002—(1) The Deputy Engineer, Zilla Parishad, Construction Sub-Division, Kankawali, District Sindhudurg. (2) The Chief Executive Officer, Zilla Parishad, Sindhudurg At post Oras, District Sindhudurg.—*Petitioners*—*Versus.*—Mr. Bhupal Shantappa Upadhye, At post. Shiy (Jain Mandir), Tal. Karveer Dist. Kolhapur.—*Respondent.*

In the matter of Revision u/s. 44 of the MRTU & PULP Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri. M. S. Topkar, Advocate,

Shri. B. D. Manolkar, Advocate for the Petitioners.

Shri. A. M. Patwardhan, Advocate for the Respondent.

Judgment

1. This is a Revision by original Respondents challenging legality of order passed below application (Exh. U-19) in complaint (ULP) No. 331 of 1999, by Labour Court Kolhapur, whereby they are directed to allow the Complainant to work on his previous post temporarily, till decision of main complaint.

2. Admittedly, present Respondent (hereinafter referred to as the Complainant) was in employment of present Petitioner (hereinafter referred to as the Respondents) from the year 1983. He then worked from time to time. He filed above complaint on 11th October 1999 alleging that he worked from the year 1993 till 1st November 1997 continously without any break for more than 240 days in each year. Even then he is orally terminated on 1st November 1997 in violation of provisions of Section 25 F of the I. D. Act. As such, his termination is an unfair labour practice. He then claimed reinstatement with continuity of service and full back wages. He made an application (Exh. U-9) alongwith the complaint itself for condonation of delay. The same was allowed on 14th September 2001 and delay was condoned.

3. The Complainant then filed an application (Exh. U-19) under section 30(*2*) of the MRTU and PULP Act to direct the Respondent to allow him to join duties, till decision of main complaint. He alleged that work is still available and worked for more than 240 days in preceding 12 months of his termination.

4. The Respondents filed their say at Exh. C-22 contending that no final relief can be granted by way of interim relief. The Complainant was appointed purely on temporary basis as and when work was available. Later on, he was discontinued. He worked for 14 days in the year 1993, for 51 days in the year 1994, for 25 days in the year 1995 and for 171 days in the year 1996. He worked 140 days during 1st January 1997 to 20th May 1997 and for 123 days during 21st July 1997 to 20th November 1997. Therefore, he cannot be termed as or can be presumed to be on converted regular temporary (C. R. T.). Besides, no juniors are retained. Finally, They prayed for dismissal of the application.

5. Learned Labour Court, on perusal of say Exh. C-22 itself observed that the Complainant has worked for more than 240 days in the year 1997, rendered continous service as provided under section 25 B of the I. D. Act and therefore, his oral termination is *prima facie*, in violation of mandatory provisions of Section 25 F and 25 G of the I. D. Act. It then held that the Respondents can save back wages by allowing the Complainant to work and temporary directions to allow him to work is not a final relief. Ultimately it allowed Complainant's interim application (Exh. U-19) on 28th January 2002 as above. The said order is challenged in this Revision.

6. I heard both Advocates. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned interim order is justifiable ?

(*ii*) What order ?

7. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) The Revision Application is dismissed.

Reasons

8. This being a Revision under section 44 of the MRTU and PULP Act, it is not necessary to scrutinise rival contentions meticulously. The only material question is whether documents on record are incapable of supporting impugned order. In other words, whether impugned order is perverse of justifiable.

9. Shri. Manolkar, learned advocate representing the Respondents vehementaly argued that issue of oral termination has to be decided after leading oral evidence and hence grant of interim temporary reinstatement is unsustainable in law. Now, no work is available but such fact is not considered.

10. Shri. Patwardhan, learned advocate representing the Complainant replied that Kalelkar Award is applicable to Construction Sub-Division of Zilla Parishad. Even otherwise, the Complainant has rendered continous service of more than 240 days preceding his oral termination. Therefore, interim temporary reinstatement was just and proper.

11. It is stated in the Revision memo itself that mere completion of 240 days service does not confer a statutory right of employment to the Complainant. In my judgment, it was necessary for the Respondent to comply provisions of the I. D. Act while terminating the Complainant. But admittedly, those are not complied with. Therefore, now the Respondents cannot say that interim temporary reinstatement is final relief. Even otherwise, impugned order does not amount to final relief as the same is subject to final decision of main complaint. Observations of learned labour Court that Respondent can save back wages by availing services of the Complainant are well justifiable. Finding of fact that he worked for more than 240 days in preceding 12 months of termination, needs no disturbance. In such circumstances, I find that learned labour Court was well justified in directing interim temporary reinstatement. Impugned order does not spell of arbitrariness. On the contrary, there is every substance in its reasoning. Consequently, no case is made out for interference. Accordingly, I answer Point No. 1 in the affirmative and pass following order :—

Order

(*i*) The Revision Application is dismissed.

(*ii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 26th June 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———————

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 205 OF 1997—Maharashtra State Road Transport Corporation, through Divisional Controller, Sindhudurga Division, Sindhudurg, Kankavali.—*Petitioner—Versus.*—Shri. Dnyanu Shripati Patil, R/o. Kaulav, Tal. Radhanagari, Dist. Kolhapur.—*Respondent.*

In the matter of Revision u/s. 44 of the MRTU & PULP Act, 1971.

CORAM.— C. A. Jadhav, Member.

Appearances.— Shri. M. G. Badadare, Advocate, for Petitioner.

Shri. D. N. Patil, Advocate for Respondent.

Judgment

1. This is a Revision by an employer Maharashtra State Road Transport Corporation challenging legality of Judgment and order passed in complaint (ULP) No. 211 of 1991 by the labour Court. Kolhapur, whereby he is directed to reinstate his employee driver with continuity of service but without bakcwages by permanently withholding two increments.

2. Admittedly, present Respondent (hereinafter referred to as the Complainant) joined present Petitioner (hereinafter referred to as the Transport Corporation) as a driver on daily wages in January, 1990. He was driving Corporation's bus on 28th April 1990 on Reddy-Malavan route. The Coproration then served a chargesheet dated 29th June 1990 upon him under clauses 11, 15, 22 and 39 of its Discipline and Appeal Procedure mainly alleging that he drove the S. T. bus in an excessive speed, dashed a pedestrian who dies on the spot and did not stop at the spot. The Complainant denied all the charges and then an enquiry took place. The Enquiry Officer held that all charges are proved. Ultmattely he was dismissed with effect from 22nd July 1991. Above complaint came to be filed on 16th August, 1991 *inter alia* contending that the enquiry is contrary to the principles of natural justice. Only Reporter was examined and none of the witnesses who saw alleged incident were examined. In fact, the Complainant never dashed said padestrian and he is falsely implicated in the enquiry. Finding of the enquiry officer are perverse. As such, the dismissal is an unfair labour practice. The Complainant then prayed for reinstatement with continuity of service and full backwages. The Complainant also made an application Exh. U-2 under section 30(*2*) of the MRTU and PULP Act of the MRTU and PULP Act whereon, the labour Court passed an *ex-parte* directing the Corporation to allow the Complainant to join the duties until further orders with show cause notice. It appears that no final hearing of the interim application (Exh. U-2) took place.

3. The corporation filed its say cum written statement at Exh. C-11 and traversed all material allegations made by the Complainant. It contended that the Complainant dashed the padestrian resulting into his death on the spot, however did not stop but took the bus to the Depot. Misconduct was serious and hence chargesheet was issued. The enquiry is in consonance with principles of natural justice and findings of the Enquiry Officer are well justifiable. Proved misconducts were serious and hence punishment of dismissal is legal and proper. Thus, the Corporation justified its action and prayed for dismissal of interm application as well as the complaint.

4. Issues were framed at Exh. 13 and the parties were to the trial. None of the parties led oral evidence. The Corporation produced entire enquiry papers alongwith Complainant's default card. The Complainant produced copy of judgment of Judicial Magistrate, First Class, Vengurle acquiting him on 18th April 1994.

5. Learned Labour Court, on perusal of evidence and hearing both parties held that enquiry is fair and findings of the Enquiry Officer are not perverse. It then held that the Complainant has not repeated the misconduct till the year 1997 and hence punishment of dismissal is harsh and sevire. Ultimately, it allowed the complaint as above *vide* judgment and order dated 30th April 1997. The same is challenged in this Revision.

6. I heard both Advocates. Considering rival pleadings, following points arise for my determination :--

(*i*) Whether impugned judgement directing reinstatement with continuity of service by withholding annual increments permanently, is justifiable ?

(*ii*) What order ?

7. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) The Revision Application is dismissed.

Reasons

8. This being a revision under section 44 of the MRTU and PULP Act, it is not necessary to scrutinise all material record meticulously. The only material question is whether documents on record are incapable of supporting impugned order. In other words, whether impugned order is perverse of justifiable.

9. The Complainant has not filed counter revision challenging finding of labour Court that the enquiry is fair and findings of the Enquiry Officer are not perverse. Shri. Patil learned Advocate representing him did not seriously dispute such finding of labour while supporting impugned decision. Even otherwise, I find that the same is plausible and justifiable.

10. Shri. Badadare, learned advocate representing the corporation vehementaly argued that the Complainant joined the Corporation on daily wages and committed a fatal accident within a short period. Safety of general public is prima consideration of the Corporation. The Complainant if reinstated, may commit similar misconduct again. Prevention is always better than cure. The Corporation cannot take risk of similar or same serious miscounduct. Therefore, punishment of dismissal was quite proper. But the Labour Court extended misplaced sympathy to the Complainant. Advocate Shri. Patil replied that the past record of the Complainant is clean and unblamished except present misconduct. Past record serves as a barometre to consider the nature of punishment to be imposed. The Complainant has got a lesson and is always careful. He has not committed similar or any other misconduct when worked as per interim relief granted by the labour Court. In support of his arguments he relied on decision in *Divisional Controller, M. S. R. T. C. Bhandara* V/s. *Gulab Tanbaji Bhandarkar reported in 1998 I LLJ at page 818.*

11. It is held in above decision that an employer is bound to consider past record while imposing punishment, past record serves as a barometre to consider nature of punishment to be imposed and the case of an employee who commits misconduct on one occassion is certainaly different from that an employee who has been charged on several occasions for misconduct and misconduct is proved against him. In the present case above is the sole misconduct to Complainants credit. Learned Labour Court has observed that the Complainant did not repeat similar misconduct during pendency of the complaint. It is not case of the Corporation that now the Complainant has committed similar or any other misconduct. As such, above decision is squarely applicable to this case. The Complainant is in employment by virtue of interim relief granted by the Labour Court. He is still in service. He has not committed similar or any other misconduct. Therefore, learned labour Court has rightly held that punishment of dismissal is harsh and severe. Accordingly, it has rightly commuted the punishment to permanent withdrawal of two annual increments. I, therfore, find that impugned decision is well justifiable. Accordingly, I answer Point No. 1 in the affirmative and pass following order :—

Order

(*i*) The Revision Application is dismissed.

(*ii*) No order as to costs.

C. A. JADHAV
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 17th June 2002

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———————

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 21 OF 2001.—Deputy Engineer, Mechanical Sub-Division No. 1, Alore, Tal. Chiplun, District Ratnagiri—*Petitioner—Versus*—Chandrakant Parashuram Powar, R/o. Bazar Road, Shirgaon, Chiplun, Dist. Ratnagiri.—*Respondent.*

In the matter of Revision u/s. 44 of the MRTU & PULP Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri S. R. Pisal, Asstt. Government Pleader for Peritioner.

Shrimati N. A. Ramtirthakar, Advocate for Respondent.

Judgment

This is a Revision by original Respondent Deputy Engineer challenging legality of order passed below Exh. U-13 in Complaint (ULP) No. 497 of 1992 by Labour Court, Kolhapur, whereby delay of 4 years in filing the complaint is condoned with a condition that original Complainant shall not be entitled to back wages till the date of presentation of the complaint, if succeds finally.

2. Admittedly, present Respondent (hereinafter referred to as the Complainant) was working as a driver with present Petitioner (hereinafter referred to as the Deputy Engineer) from 4th January 1979. A Theft took place on 23rd December 1985 in the campus of Mechanical Sub-section. Eventually, a complaint come to be lodged against the Complainant and other three employees and all of them were prosecuted by Police in the Court of Judicial Magistrate, Ist Class, Khed *vide* Regular Criminal Case No. 10/85. The Complainant was arrested by Police. All the Accused including the Complainant were acquitted on 24th February 1988.

3. The Complainant filed above complaint on 17th December 1992 alleging that he was orally terminated on 24th December 1985 and his termination is an unfair labour practice under item 1(*a*), (*b*), (*d*), (*f*) and (*g*) of Schedule-IV of the M.R.T.U. and P.U.L.P. Act, 1971. He these prayed for reinstatement from 24th November 1985 with continuity of service and full back wages.

4. Assistant Government Pleader, Kolhapur put appearance on behalf of Deputy Engineer and filed written statement at Exh. 11. He contended that the complaint is barred by limitation and issue of limitation be framed and decided as preliminary issue. he further contended that the Complainant himself did not attend duties from 1st January 1986. He accepted that another employee-Accused Shri Rajput was allowed to join duties as was suspended on account of his arrest and being working on converted regular temporary establishment. Other pleadings in the written statement are not material at this stage.

5. It is alleged in the complaint (Exh. U-1) that Appeal filed by the Deputy Engineer in the Hon'ble High Court against acquittal was dismissed. The Complainant appraoched Deputy Engineer, time and again for reinstatement after the acquittal but there was no positive response. The complaint then filed an application (Exh. U-13) for condonation of delay reiterating same grounds. He further pleaded that the Deputy Engineer assured to reinstate him after termination of criminal case and hence did not file the complaint immediately. So also criminal case was pending against him and hence did not file the complaint earlier. It appears from the record that the Deputy Engineer did not file separate say to the application Exh. U-13 for condonation of delay. The Complainant examined himself on oath at Exh. U-16 and was cross examined by learned Assistant Government Pleader.

6. Learned Labour Court, on perusal of evidence and hearing both parties, observed that grounds put forth for condonation of delay are good and acceptable. Ultimately, it conditionally condoned the delay by allowing the application, as aforesaid, *vide* order dated 12th February 2001. The same is challenged in this Revision.

7. I heard both sides. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned order condoning the delay with a condition that the Complainant shall not be entitled to back wages till the date of filing of the complaint, if succeds finally, is justifiable ?

(*ii*) What order ?

8. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) The Revision Application is dismissed.

Reasons

9. This being a revision under section 44 of the MRTU and PULP Act, 1971, it is not necessary to scrutinise the rival contentions meticulously. The only material question is whether documents on record are incapable of supporting impugned order. In other words, whether impugned order is perverse or justifiable.

10. Learned Assistant Government Pleader Shri Pisal vehementaly argued that there is absolutely no documentary evidence to show that the Complainant approached the Deputy Engineer time and again, was assured re-employment after decision of criminal case but audit was flouted. Delay cannot be and should not be condoned only on the ground of askance. In support of his arguments, he relied on following decisions :—

(*i*) *Ratam Chandra Sammanta and Others* v/s. *The Union of India and others reported in 1993 I CLR at page 1072.*

(*ii*) *Hindustan Lever Ltd.* v/s. *Hindustan Lever Mazdoor Sabha and others (1996 II CLR 102).*

(*iii*) *Association of Engineering Workers* v/s. *Sunita Engineering P. Ltd. reported in 1998 I CLR at page 521* and

(*iv*) *Pune D.C.C. Bank Ltd.* v/s. *Hiralal Ramchandra Gaikwad* reported in *1999 (81) FLR 611).*

11. Smt. Ramtirthakar, learned Advocate representing the Complainant replied that the Complainant is a poor and illiterate person. He stays in a village and was unaware about his rights, oral termination etc. He was under a *bonafide* impression that criminal case is filed and hence there is no point in appraoching the Deputy Engineer. Besides, he was to serve under same Deputy Engineer. Generally, a Class-IV employees like driver, does not take immediate action and that too against his employer as his service is practically at the mercy of his employee. The Deputy Engineer has nowhere stepped into the witness box and has denied about repeated requestes of the Complainant. A finding of fact that there is good and acceptable reason for condonation of delay cannot be set aside as evience cannot be reappreciated while entertaining revision under Sec. 44 of the MRTU and PULP Act, 1971. He further added that the Complainant has fairly wavied his back wages while claiming reinstatement, if succeds finally ? Each case has to be decided on its peculiar facts and circumstances. Therefore, observations in decisions relied by other sides cannot be applied here. Finally, she supported impugned order.

12. In Rattam Sammant's case, there was delay of more than 15 years and that too after directions of Hon'ble Apex Court to prepare a scheme and absorb casual labourers in accordance with their seniority. Hon'ble Apex Court observed that accepting prayer of the Petitioner would deprive many of casual labourers who, in the mean time have become eligible and are entitled to claim to be employed. Such are not the facts of a case in hand. It is not a case of the Deputy Engineer that another driver is appointed and therefore, condonation of delay would be cumbursome.

13. Same is case regarding decision of Hindustan Lever Ltd. In that case, the union came with a case that the judgment of Supreme Court gives fresh cause of action and Hon'ble High Court held that Hon'ble Supreme Court only interpreted corespondence between the parties and did not given fresh cause of action. Therefore, observations therein are of no help to the Deputy Engineer.

14. In the case of Assoication of Engineering Works, no explanation whatsoever was given for filing an application for restoration belately. In this case, an explanation is given. Therefore, those observations are inapplicable here.

15. In Pune District Central Co-op. Bank Ltd.'s case, falcity of medical evidence was noted. In the present case, there is no evidence in rebuttal by the Deputy Engineer to show that the Complainant never appraoched him. Generally, no class IV employee takes immediate action against his employer as he has to work under same employer. Moreover, he does not wish to dis-believe him. The Complainant was prosecuted by police and therefore, did not taken action pending of criminal case. As such explanation is plaussible and juristified too. Later on, he appraoched the Deputy Engineer. Thus, finding of fact recorded by learned Labour Court is reasonable, justifiable and plassible. In addition, the Complainant has fairly waived his back wages till the date of presentation of the complaint, if succeeds finally. It is better to decide controversy on merits rather than technication. In my humble opinion words "good and sufficient reasons" occuring in proviso of Sec. 28 of the MRTU and PULP Act are to be construed liberally so as to advance cause of substantial justice. The Complainant has come with a case of oral termination whereas the Deputy Engineer says that he has abandoned the service. The Deputy Engineer can well justify his action and get the complaint dismissed. As such, he will not be prejudiced if the delay is condoned. I, therefore, find that learned labour Court was well justified in condoning the delay. In addition, it has put a condition that the Complainant will not be entitled to back wages till the date of filing of the complaint if succeeds finally. The condition is proper and rational too. Accordingly, I answer Point No. 1 in the affirmative.

16. In short, impugned order is well justifiable and does not spell of arbitrariness or perversity. On the contrary, there is every substance in its reasoning. As such, no interference is called for. Interference under section 44 of the MRTU and PULP Act is warranted if there is glaring mistake which has resulted into mis-carriage of justice. Such is not the present case. Consequently, the Revision Application needs to be dismissed.

17. In the result, I pass following order :—

Order

(*i*) The Revision Application is dismissed.

(*ii*) R and P be sent forthwith to Labour Court, Kolhapur and the parties shall appear there on 24th June 2002.

(*iii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 10th June 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———————

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 51 OF 2002.—Medical Superintendent, Sir William Wanless Chest Hospital, Wanlesswadi, Tal. Miraj, Dist. Sangli—*Petitioner—versus.*—Shri James Emmanual William, R/o. Wanless Chest Hospital Compound, Wanlesswadi, Tal. Miraj, District Sangli.—*Respondent.*

In the matter of Revision u/s. 44 of the MRTU & PULP Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Mrs. S. S. Mutalik, Advocate for the Petitioner.
Shri D. S. Yadav, Advocate for the Respondent.

Judgment

This is a Revision by original Respondent-employer challenging legality of order passed below Exh. U-2 in complaint (ULP) No. 29 of 2002 by Labour Court, Sangli, whereby he is directed to allow original Complainant-employee to join duties, till decision of main complaint.

2. Admittedly, present Respondent (hereinafter referred to as the Complainant) was in employment of present Petitioner (hereinafter referred to as the Hospital) as X-ray Technician. Hospital's Medical Superintendent dismissed him by order dated 8th April 2002 with effect from 9th April 2002. It is alleged in the order that the Complainant forcibly entered Medical Superintendent's cabin at 4.30 p.m. on 5th April 2002, rushed towards the Medical Superintendent, abused him in filthy and absence language and threatened to hurt him. It is further alleged that the misconduct is serious, initiation of enquiry is dangerous and the management has lost confidence of him.

3. Above complaint came to be filed on 17th April 2002 alleging that the Complainant was in employment from 5th July 1994. No took initiative and active part in forming an Union of employees of the Hospital. He was one of the representative of the employees in the Scheme framed by Assistant Charity Commissioner for the Hospital. Hospital Authorities did not like his legitimate activities and decided to sack him on one pretext or the other. It then conected false incident, as stated in dismissal order and dismissed him. In fact, he never misbehaved as alleged. It is further contended that there were no exceptional or extra-ordinary circumstances for initiating an enquiry against him. The management even did not opt for a suspension as per Standing Orders. As such, his dismissal is an unfair labour practice under items 1(*a*), (*b*), (*d*), and (*f*) of Schedule-IV of the MRTU and PULP Act. In the alternate, it is contended that past record of the Complainant is good and punishment for alleged misconduct is shockingly disproportionate which amounts to legal victimisation and an unfair labour practice under item 1(*g*) of Schedule-IV of the MRTU and PULP Act.

4. The Complainant also made an application (Exh. U-2) under section 30(*2*) of the MRTU and PULP Act to direct the Hospital to temporarily withdraw the unfair labour practice and allow him to join duties till decision of main complaint.

5. Hospital's Medical Superintendent filed his say *cum* written statement at Exh. C-3 contending that the Complainant was temporarily employed from the year 1998. The Complainantly forcibly entered his cabin, abused in filthy and absence language, assulted and threatened him and thereby committed serious misconducts. Eventually, he was dismissed without holding an enquiry as Hospital's reputation and discipline was in danger. The Complainant would have committed similar misconduct if continued in service, during the domestic enquiry. Thus, the Medical Superintendent justified its action, sought leave to lead evidence in support thereof and finally prayed for dismissal of the complaint.

6. The Complainant produced Hospital's letter dated 7th May 2002 wherein, he is certified to have been working as a full time permanent Radio-grapher from 5th July 1994 and his conduct is said to be excellent, with list Exh. U-4. The Hospital produced report of employees, namely Shri Deoputra, Shri Bhandare and Shri Kamble to the Medical Superintendent regarding Complainant's misconducts.

7. Learned Labour Court, on perusal of evidence and hearing both parties, observed that the Complainant was continued in employment till 8th April 2002 despite alleged misconduct on 5th April 2002, not issued with show cause notice and chargesheet and report of the employees conspicuously does not say that the Complainant assaulted the Medical Superintendent. It then held that the dismissal, *prima facie,* an unfair labour practice. Finally, it allowed the interim application (Exh. U-2) as above, *vide* order dated 12th June 2002. The same is challenged in this Revision.

8. I heard both Advocates. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned order temporarily directing the Hospital to allow the Complainant to join duties till decision of main complaint, is justifiable ?

(*ii*) What order ?

9. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) The Revision Application is dismissed.

Reasons

10. This being a Revision under section 44 of the MRTU and PULP Act, it is not necessary to scrutinise the rival contentions meticulously. The only material question is whether documents on record are incapable of supporting impugned order. In other words, whether impugned order is perverse or justifiable ?

11. Although, it is contended in the written statement (Exh. C-3) that the Complainant is temporarily working from the year 1998, certificate produced by the Complainant says that he is permanently working from 5th July 1994. Further his services are said to be satisfactory and conduct excellent. Said certificate was issued on 7th May 2000.

12. Mrs. Mutalik, learned Advocate representing the Hospital vehementaly argued that the Hospital has sought leave to lead evidence to substantiate its action. Misconduct noticed was grave and serious and initiation of a domestic enquiry was not advisable. The Respondent is a Hospital wherein utmost discipline is warranted. Grant of interim relief amounts to grant of final relief and impugned order is unsustainable. the Complainant can claim all reliefs if succeds finally. As such, the labour Court exceeded its jurisdiction and passed impugned order. In support of her arguments, she relied on various decisions which are already referred by the Labour Court.

13. Shri Yadav, learned Advocate representing the Complainant countered above arguments and replied that the Complainant is simply holding a technical post and never held a position of confidence. The management could have suspended him in anticipation of an enquiry. As such, order of dismissal is colourable, *malafide* and an act of victimisation. Nothing prevented the management from holding an enquiry. In addition, the employees have never reported that the Complainant assaulted the Medical Superintendent and thus, there is material inconsistency between the Report and allegations in the written statement. Eventually, *prima facie,* evidence of unfair labour practice is well justifiable.

14. I am respectfully bound by the decision relied by Advocate Mrs. Mutalik. It is unnecessary to reinterate observations therein as those are stated precisely by learned Labour Court.

15. It is right of the management to lead evidence to substantiate its action. It is not a statutory right but a procedural aspect. Report of the employees nowhere says that the Complainant physically assaulted the Medical Superintendent. Even then, it is contended in the written statement (Exh. C-3) that he assaulted the Medical Superintendent. Apart from that there is nothing on record to show that the Complainant was holding position of confidence. On the contrary, it *prima facie* appears that he was doing technical work and has least nexus with the Medical Superintendent. In addition, his past record appears to be good and his conduct is certified to be excellent from July, 1994 to May, 2000. In such circumstances, it is difficult to accept *prima facie* that the Complainant was holding a position of confidence and the management lost confidence of him.

16. It is also glaring to note that there was no difficult for initiating a domestic enquiry against him. The management to rule out apprehension of repeating similar misconduct, could have suspended him pending the enquiry. The very object of suspension is to refrain an employee to avail further opportunity to repeat alleged misconduct or to remove impression amongst other employees that dereliction of duties would pay fruits. In other words, the management could have suspended the Complainant pending the enquiry and that would be in consonance with reputation and discipline. As such, *prima facie,* reasons for non-initiation of enquiry are unsatisfactory. No doubt, the Hospital can substantiate its action by leading evidence before the Labour Court but that cannot be a legitimate ground for non-initiation of the enquiry.

17. In the background of above discussions, I find that pleas of the Hospital do not appear to be *bonafide* and reasonable. *Prima facie* there is colourable or *malafide* exercise of powers which amounts to victimisation. It further appears that the dismissal is with undue haste, Complainant past record is good and alleged misconduct is not like a fraud and a misappropriation. Basically, the Complainant was not holding a position of confidence and *prima facie* resort to plea of loss of confidence, does not stand to reason. I, therefore, find that learned Labour Court was well justifiable in granting the interim relief. It does not amount to final relief as the same is subject to final decision of main complaint. There are exceptional circumstances on record to pass impugned order. Accordingly, I answer Point No. 1 in the affirmative.

18. Before parting with this judgment, I must say that the Hospital if does not wish to allow the Complainant to resume duties till decision of main complaint, it is at liberty to deposit due wages of the Complainant in Labour Court, till the complaint is finally decided and the Complainant shall be entitled to withdraw the same.

19. To conclude, I pass following order :—

Order

(*i*) The Revision Application is dismissed.

(*ii*) The Petitioner, in lieu of impugned order, is at liberty to deposit wages of the Complainant from 9th April 2002 onwards in Labour Court, Sangli from month to month till decision of main complaint and the Complainant shall be entitled to withdraw the same, if deposited.

(*iii*) R. and P. be sent to Labour Court, Sangli and the parties shall appear there on 19th August 2002.

(*iv*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 22nd July 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———————

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 100/1998.—General Manager and Chief Executive Officer, Murugharajendra Sahakari Bank Ltd., Miraj, No. 3580, Somwar Peth, Miraj, Dist. Sangli..—*Petitioners—Versus.*—Shri Tamma Basgonda Udgave, R/o. Nadi Vesh, Budhawar Peth, Miraj, Tal. Miraj, Dist. Sangli.—*Respondent.*

In the matter of Revision u/s. 44 of the MRTU & PULP Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri. V. G. Shete, Advocate for the Petitioner.

Shri. H. G. Bhokare, Advocate for the Respondent.

Judgment

This is a Revision by original Respondent Bank challenging legality of order passed below Exh. U-2 in complaint (ULP) No. 535 of 1992, by Labour Court, Sangli, whereby delay in filing main complaint is condoned.

2. Present Respondent (hereinafter referred to as the Complainant) filed above Complaint on 30th December 1992 challenging his termination with effect from 30th September 1987 on various grounds. He made an Application (Exh. U-2) for condonation of delay contending that he approached the Bank Officials as well as its Directors. They assured to employ him in future and hence did not file the complaint immediately. Later on, he realised that the assurances are not fruitful and then filed the complaint. According to him, therefore, there are good and sufficient reasons for condonation of delay.

3. The bank objected the Application *vide* composite say cum written statement at Exh. 8 that reasons putforth for condonation of delay are unsatisfactory and prayed for dismissal.

4. The Complainant then examined himself at Exh. U-6 whereas the Chief Officer of the Bank Shri Bobade at Exh. C-3. The Labour Court on perusal of evidence and hearing both parties condoned the delay *vide* order dated 24th February 1998. The same is challenged in this Revision.

5. I then heard both Advocates. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned order condoning delay needs interference ?

(*ii*) What order ?

6. My findings, on above points, are as under :—

(*i*) No.

(*ii*) The Revision Application is dismissed.

Reasons

7. This being a Revision under section 44 of the MRTU and PULP Act, it is not necessary to scruitinse the rival contentions, meticuloursly. The only material question is whether documents on record are incapable of supporting impugned order. In other words, whether impugned order is perverse or justifiable.

8. The Complainant has testified that he met Bank's Director Shri Kore. He explained in the cross examination that he met Shri Kore between 30th September 1987 to 31st December 1992 for four times. Bank's Advocate Shri Shete argued that name of the Director is nowhere pleaded but it is stated for the first time in the evidence. The Complainant was appointed as a trainee and then discharges. He was nowhere confirmed as probationer when discharged. There is delay of 5 years and it is nowhere satisfactorily explained but the Labour Court extended misplaced sympathy and condoned the delay. In support of his arguments, he relied on the decision in *Bhanudas Bhagale* V/s. *Executive Engineer reported in 1994 II Mah. L. R. at page 382.*

9. Shri. Bhokare, learned Advocate representing the Complainant replied that the Complainant intended to work with the Bank, was assured re-employment or fresh employment and hence did not thought it proper to immediately rush to the Court. The Complainant has to work under the Bank and hence no urgent drastic step was proper. He met the Director time and again and has good case on merit. Finding of fact that there are good and sufficient reasons, therefore, does not warrant interference.

10. I am respectfully bound by decision relied by Advocate Shri Shete. In that case there was nothing on record to substantiate the contention of making representations. In this case, there is oral evidence on record.

11. It is settled law that the Court should be liberal while condoning the delay. The Courts are supposed to do substantial justice and to apply the law in a meaningful manner. A litigant does not gain anything by bringing a claim late. In the present case, the Complainant has tried to have employment through Director Shri Kore. Consequently, it cannot be accepted that he was negligent. It is better to decide the controversy on merits and the Bank will not be prejudiced by the same. The delay can well be considered while granting back wages if the Complainant succeeds ultimately. I therefore find that there is no perversity in impugned order and no interference is called for. Accordingly, I answer Point No. 1 in the negative and pass following order.

Order

(*i*) The Revision Application is dismissed.

(*ii*) R. and P. be sent to Labour Court, Sangli and parties shall appear there on 19th August 2002.

(*iii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.
Maharashtr

Kolhapur,
Dated the 19th July 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

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